

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 28TH DAY OF AUGUST 2014/6TH BHADRA, 1936

RFA.No. 553 of 2006 (B)

AGAINST THE JUDGMENT IN OS 650/1994 of ADDL.SUB COURT,PARAVUR
DATED 31-10-2003

APPELLANT/1ST PLAINTIFF::

JOSE KURUVILA,
AGED 47 YEARS,
VARAPPURATH VEETIL,
VENGOLA KARA, -DO- VILLAGE.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS/1ST DEFENDANT AND 2ND PLAINTIFF::

1. K.M.POULOSE
MANAGING PARTNER,
MARKAUMA TRANSPORT, VENGOOR.
(KADUVETTI HOUSE, VENGOOR).

2. A.P. KURIAN, AGED 60 YEARS,
PUTHANPURAYIL VEETIL, MECHHOOR KARA,
MANEED VILLAGE.

R,R1 BY ADV. SRI.VINOD VALLIKAPPAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 28-08-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

R.F.A No.553 of 2006-B

Dated this the 28th day of August, 2014

J U D G M E N T

Ramachandran Nair, J.

The appellant herein is the 1st plaintiff in O.S.No.650 of 1994 of the Additional Sub Court, North Paravur. The 2nd respondent herein is the 2nd plaintiff in the suit.

2. The entire subject matter of the dispute is related to a stage carriage bus bearing Registration No.K.R.F 2309, which was plying in the route Vaniyeli – Mattanchery road, of which the 1st respondent herein was the registered owner. Father of the 2nd respondent herein entered into an agreement for purchase of the said vehicle on 25.02.1983 with the 1st respondent herein. The vehicle was sold him and it was in the possession of the father of the 2nd respondent - Paily. He died on 30.01.1986. Before the death of the father of the 2nd respondent, he had executed a document in favour of the the 2nd respondent and thereafter the 2nd respondent was put in possession of the vehicle also. It appears that the 2nd respondent Kurian was a

Government servant and the vehicle was also having a regular permit up to 12.06.1994. Later, the 2nd plaintiff approached the 1st defendant, after the death of his father, to transfer the permit and vehicle in the name of the appellant/1st plaintiff. But its written statement not transferred.

3. In O.S.No.650 of 1994 from which the present appeal arises, the plaintiffs prayed for a declaration that the 1st plaintiff is the owner of bus bearing Reg.No.K.R.F 2309 and they also sought for permanent injunction restraining the 1st respondent from disputing Ext.A3 order of the Road Transport Authority. The 1st defendant raised a counter claim. He admitted that he owned the vehicle and there was an agreement for sale of the vehicle in favour of the father of the 2nd respondent herein, pursuant to which the said Paily was put in possession of the same. Various other aspects have been pleaded in the written statement.

4. In the counter claim the amount involved is Rs.29,068/- which is the contribution remitted by the 1st respondent to the welfare fund of the motor workers.

5. After denying the prayer for declaration, the counter claim has been decreed and the plaintiffs were directed to pay an

amount of Rs.29,068/- within three months with 6% interest per annum from the date of suit till its realisation.

6. We heard the learned Senior Counsel for the appellant Sri Ranjit Thampan and the learned counsel for the 1st respondent Sri Vinod Vallikkappan. The learned Senior Counsel for the appellant submitted that there cannot be a decree as against the appellant herein especially since the declaration sought for in the suit has been denied. Even going by the evidence it can be seen that the 2nd respondent was put in possession of the vehicle and his father had executed the agreement initially with the 1st respondent herein.

7. We find from the judgment that while discussing issue Nos.1 and 2, the court below was of the view that since ownership of the vehicle was still in favour of the 1st defendant, the declaration cannot be granted. In para.9 while referring to Ext.P3 agreement dated 25.03.1991 it is mentioned that the ownership of the vehicle was with the 1st defendant till the date of execution of the document and thereafter both the 2nd plaintiff and the 1st defendant have agreed to transfer the ownership of the vehicle within two months in the name of the 1st plaintiff provided that the plaintiffs have remitted all the dues due to the

Motor Workers Welfare Fund in connection with the bus. Exts.B1 and B2 are the receipts showing the payment of amount by the 1st defendant to the Motor Workers Welfare Fund and Ext.B5 is a further notice received from the said Welfare Fund Board. This is the document under which the declaration sought for was rejected by the court below.

8. We are of the view that the appellant herein cannot be saddled with any liability because there is nothing to show that the ownership of the bus or permit was transferred in the name of the appellant. In that view of the matter, the appeal is allowed. The decree as against the appellant alone viz., directing him along with the 2nd plaintiff to pay Rs.29,680/- (Rupees Twenty nine thousand six hundred and eighty only) within three months with 6% per annum, is vacated. The parties will suffer their costs in the appeal.

Sd/-
T.R.RAMCHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge