

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

RFA.No. 648 of 2011 ()

OS 784/1995 of ADDL. SUB COURT, NORTH PARAVUR

APPELLANT/4TH DEFENDANT :

**SUNNY V.PAUL, AGED 56 YEARS, S/O.PAULOSE,
VALAYIL HOUSE, AIRAPURAM KARA, AIRAPURAM VILLAGE,
KUNNATHUNADU TALUK.**

**BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM**

RESPONDENTS/PLAINTIFF & DEFENDANTS 1 - 3:

- 1. VINOD, S/O.NANDANAN,THOTTUNGAL HOUSE,
KUZHIPPILLY VILLAGE, AYYAMPILLY KARA
PARAVUR TALUK. 683 514.**
- 2. STATE OF KERALA
REP.BY DISTRICT COLLECTOR, ERNAKULAM
CIVIL STATION KAKKANAD 682 030.**
- 3. TAHSILDAR,
KUNNATHUNADU TALUK, PERUMBAVOOR, 683 542.**
- 4. DISTRICT EXECUTIVE OFFICER,
MOTOR WELFARE EMPLOYEES,
ERNAKULAM, PALARIVATTOM - 682 025.
CORRECT ADDRESS
DISTRICT EXECUTIVE OFFICER,
MOTOR TRANSPORT WORKERS,
WELFARE FUND INSPECTOR
ERNAKULAM PALARIVATTOM - 683525.**

**R1 BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
R1 BY ADV. SRI.P.VISWANATHAN
R2 & R3 BY GOVERNMENT PLEADER SRI.P.P. PADMALAYAN
R4 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD**

**THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

P.B.SURESH KUMAR, J.

R.F.A.No.648 of 2011

Dated this the 22nd day of June, 2015

JUDGMENT

The decision in O.S.No.784 of 1995 on the file of the Additional Sub Court, North Paravur is under challenge in this appeal. The fourth defendant in the suit is the appellant.

2. The case of the plaintiff is that he has purchased the plaint schedule bus from one Radhakrishnan on 8.2.1995 for a sum of Rs.1,40,000/-; that the registration of the bus was transferred to the name of the plaintiff on 23.2.1995; that the plaintiff was operating the plaint schedule bus from the date of purchase and that the fourth defendant has forcibly removed the bus to his house from the custody of the plaintiff on 4.12.1995. According to the plaintiff, the fourth defendant was earlier operating the bus and a sum of Rs.20,817/- was due from him to the Motor Transport Workers Welfare Fund Board and it is to enable the Motor Transport Workers Welfare Fund Board to recover the said amount from the bus, he had removed the bus from the custody of the plaintiff. It is alleged by the plaintiff that

on 5.12.1995, the bus was attached by the revenue officials from the residence of the fourth defendant. The plaintiff, in the circumstances, claimed a declaration that the plaint schedule bus is not liable to be proceeded against for the dues of the fourth defendant and a decree for recovery of the damage caused to him on account of the conduct of the fourth defendant in forcibly removing the bus from his custody.

3. The fourth defendant contested the suit by filing a written statement. In the written statement filed by him, he denied the allegation in the plaint that he has removed the plaint schedule bus forcibly from the custody of the plaintiff. According to him, the vehicle was liable to be proceeded against for recovery of the dues to the Motor Transport Workers Welfare Fund Board and therefore the revenue officials had attached the vehicle on their own.

4. The evidence in the case consists of the oral testimonies of PW1 and PW2 and Exts.A1 and A2 documents on the side of the plaintiff and the oral testimony of DW1 and Ext.B1 (a) and B1 (b) documents on the side of the defendants.

5. The trial court found that the plaintiff is the owner of the plaint schedule bus; that the plaintiff had no liability to the

Motor Transport Workers Welfare Fund Board; that the plaintiff schedule bus is not liable to be proceeded against for recovery of the dues of the fourth defendant to the Motor Transport Workers Welfare Fund Board and that the plaintiff schedule bus was forcibly removed by the fourth defendant from the custody of the plaintiff to enable the revenue officials to proceed against the same. Consequently, the suit was decreed declaring that defendants 1 to 3 are not entitled to realise the dues of the fourth defendant to the Motor Transport Workers Welfare Fund by proceeding against the plaintiff schedule bus. A decree of permanent prohibitory injunction restraining the defendants from realising the dues of the fourth defendant from the plaintiff schedule bus was also passed. Further, the plaintiff was given a decree permitting him to realise a sum of Rs.19,800/- from the fourth defendant by way of damages. The fourth defendant is aggrieved by the said decision of the trial court and hence this appeal.

6. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

7. The learned counsel for the appellant contended that the materials on record do not indicate that the fourth defendant had removed the plaintiff schedule bus from the custody of the plaintiff.

According to the appellant, at any rate, in so far as the vehicle was attached by the revenue officials, he cannot be held liable for the damage caused on account of the attachment of the vehicle.

8. There is no substance in the arguments of the learned counsel for the appellant. As noticed above, the specific case of the plaintiff is that on 4.12.1995, the fourth defendant had forcibly possessed the plaint schedule bus from the custody of the plaintiff. The plaintiff gave evidence as PW1 in support the said case. He examined a witness as PW2, who also deposed that the vehicle was forcibly possessed by the fourth defendant on 4.12.1995. Though Pws.1 and 2 were cross examined, the evidence tendered by them regarding the forcible possession of the vehicle by the fourth defendant on 4.12.1995 was not discredited. The fourth defendant has not adduced any evidence in the case. It has come out in evidence that the vehicle was attached by the revenue officials on the next day from the courtyard of the house of the fourth defendant. There is no explanation from the fourth defendant as to how the vehicle happened to be there at his residence on 5.12.1995. Further, it is seen that a crime was registered against the fourth defendant and others alleging that they have forcibly possessed the plaint

schedule bus from the plaintiff on 4.12.1995. True, the said case ended in acquittal of the accused, but that does not mean that there was no such occurrence. In the aforesaid facts and circumstances, the finding of the trial court that the vehicle was forcibly removed by the fourth defendant from the custody of the plaintiff on 4.12.1995 cannot be held to be incorrect.

9. The plaintiff has purchased the plaintiff schedule vehicle on 8.2.1995 and the registration of the vehicle was transferred to his name on 23.2.1995. As found by the trial court, there is nothing on record to indicate that the plaintiff is liable to pay any amount to the Motor Transport Workers Welfare Fund Board. The vehicle was attached by the revenue officials on 5.12.1995. Evidently, the attachment of the vehicle was for realization of the dues of the fourth defendant to the Motor Transport Workers Welfare Fund Board. It is seen that the Motor Transport Workers Welfare Fund Act was amended on 12.8.2005 and a provision was introduced in the said Act to the effect that the vehicle will be a charge for recovery of the amounts due under the Act. The said provision could not have been applied in the instant case as the vehicle was sold long prior to the said amendment. Since the plaintiff had no liability to the Motor Transport Workers Welfare

Fund, the attachment of the vehicle by the revenue officials for realisation of the dues of the fourth defendant can only be regarded as unauthorised. True, if the vehicle had been attached by the revenue officials on their own, the fourth defendant could not have been fastened with any liability for the damages caused to the plaintiff. But, as far the present case is concerned, the facts and circumstances disclose that the fourth defendant has caused the attachment of the vehicle for realisation of his dues by forcibly removing the vehicle from the custody of the plaintiff to the courtyard of his house. As such, the court below cannot be found fault with for having held that the fourth defendant is liable to compensate the plaintiff for the damage sustained by him on account of the wrongful removal of the vehicle on 4.12.1995.

10. Though the plaintiff claimed that he sustained loss at the rate of Rs.1,000/- per day from the date of removal of the vehicle till the vehicle was released to his custody, as per the interim order passed in the suit, the court below had reckoned the loss sustained by the plaintiff on account of the wrongful removal of the vehicle only at the rate of Rs.300/- per day for the said period. The said decision of the court below cannot be held

to be incorrect.

There is, therefore, no merits in the appeal and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

P.B.SURESH KUMAR, JUDGE.

smm