IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P. No. 34746 of 2015
&
M.P. No. 1 of 2015

A. Lakshmanan ..Petitioner

Vs.

1. Regional Transport Authority,
Thudiyalur,
Coimbatore North,
Coimbatore District.

2. The Assistant Registering Authority,
Coimbatore (North),
Coimbatore District.

3. The Assistant Registering Authority,
Attur - 636 102, Salem District.

4. R. Sangeetha Priya

5. The Manager,
The Karur Vysya Bank Ltd.,
13/76A, Sitra Road,
Nehru Nagar,
Civil Aerodrome Post,
Coimbatore - 641 012. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus forbearing the respondents 1 to 3 from in any manner seizing or taking forceful possession of the petitioner's vehicle viz., Mahindra Bolero ZLX BS111 bearing Regd. No. TN-38-BY-8835.

For Petitioner :: Mr.P. Jagadeesan

For Respondents:: Mr.C. Jagadish,
Special Government Pleader (Tax)
for R1 to R3
Mr.A.V. Radhakrishnan for R5

O R D E R

1. This writ petition is filed to seek the following substantive relief:

> "To issue a Writ of Mandamus or any other writ, order of writ in the nature of writ, forbearing the respondents 1 to 3 from in any manner seizing or taking forceful possession of the petitioner's vehicle viz., Mahindra Bolero ZLX BS111 bearing Regd. No. TN-38-BY-8835."

2. The brief facts, which are required to be noticed, for the disposal of the writ petition are as follows:

2.1 The petitioner claims that he purchased the subject vehicle i.e., Mahindra Bolero ZLX BS111, bearing Registration No. TN-38-BY-8835, from the fourth respondent for a valid consideration. It is also the petitioner's case that the fourth respondent, who was the original owner of the aforementioned vehicle, had hypothecated the same with the fifth respondent Bank.

2.2 The petitioner, apparently, based on the representation of the fourth respondent, that she had re-paid the loan owed to the fifth respondent Bank and had accordingly got the hypothecation cancelled, which appeared on the Registration Certificate, entered into the aforementioned sale transaction. According to the petitioner, the hypothecation on the Registration Certificate pertaining to the aforementioned vehicle was cancelled on 18.02.2015.

2.3 It is also the case of the petitioner that since attempts were being made by the fifth respondent Bank to seize the subject vehicle, a Civil Suit for permanent injunction, being O.S. No. 83 of 2015, was instituted by him in the Court of District Munsif, Attur.

2.4. I may note that I am informed by the learned counsel for the petitioner that no interim order, whatsoever, has been passed in the aforementioned Civil Suit.

2.5 The petitioner, thus, claims that he is a bona fide purchaser, and therefore, had bought the aforementioned vehicle, based on the representation of the fourth respondent. It is also the case of the petitioner that the entries in the Registration Certificate have not been altered to date.

2.5 It is in the background of the aforesaid broad facts that the petitioner has approached this Court.

2.6 To be noted, the relief in the petition has been sought only against respondents 1 to 3.

3. Upon notice being issued, counter affidavit has been filed on behalf of respondents 1 and 2 and on behalf of the fifth respondent Bank.

4. According to the stand taken by the fifth respondent Bank, loan to the fourth respondent was sanctioned on 30.09.2014, amounting to Rs.7,40,000/- It is averred by the fifth respondent that the said amount was secured by creation of hypothecation as also by execution of eight Demand Promissory Notes. The stand of the fifth respondent Bank is that since the fourth respondent did not adhere to the schedule of re-payment, the loan was recalled and accordingly, as on 30.07.2015, an amount equivalent to Rs.3,96,277.98 is due and payable by the fourth respondent. Further more, the fifth respondent Bank avers that, when, it proceeded to take possession of the subject vehicle, it was informed by the fourth respondent that she had sold the vehicle to the petitioner, after getting its hypothecation cancelled. The fifth respondent Bank's stand is that the petitioner, in collusion with the fourth respondent, has, had the subject vehicle transferred.

5. It is also the version of the fifth respondent Bank that having become aware of the aforementioned circumstance, it made a written request on 24.04.2015 to the first respondent, which was followed by a letter dated 07.09.2015. The fifth respondent Bank further avers that in response to its second communication to the first respondent, a reply was received on 28.09.2015, wherein, it was indicated that requisite documents would be supplied within a period of thirty days. Since the needful was not done, the fifth respondent Bank, evidently, despatched another communication dated 01.11.2015 to the first respondent, which was followed by several personal visits by its representatives. It is, therefore, the stand of the fifth respondent Bank that it has not received, to date, any document from the first respondent.

6. Insofar as respondents 1 and 2 are concerned, their stand, in sum, vis-a-vis the conduct of the fourth respondent, is reflected in paragraph Nos. 8, 9 and 10 of their counter affidavit. The averments made therein, for the sake of convenience, are extracted hereunder:

"8. It is further submitted that the 4th respondent herein with malafide intention, fraudulently paid the challan to cancel the hypothecation. It is pertinent to note that there is no entry made in the office of the 2nd respondent as the Endorsement and Signature made by the competent authority and only entry for paying the challan only and further in the records the endorsement not affixed in the papers. The endorsement and signature in the original Registration Certificate is not done by the Registering Authorities. It was done fraudulently by some one which has to be probed into.

9. It is further submitted that based on the hypothecation ancelled certificate, the 3rd respondent herein transferred the vehicle from the previous owner namely Sangeetha Priya, R/the 4th respondent herein to the petitioner/namely A. Lakshmanan.

10. It is submitted that the respondent have take efforts to seize the vehicle as the 5th respondent bank has informed that the 4th respondent had not paid the vehicle loan amount and hence requested to furnish the Form-35. Then only the respondent is aware of the fraudulent act of the 4th respondent. The 4th respondent with ulterior motive to seel the vehicle to the third parties, fabricated the documents and fraudulently got the endorsement from the respondents by paying challan only."

7. In the aforesaid background, it is argued by the learned counsel for the petitioner that the petitioner is not at fault and that he proceeded to purchase the subject vehicle with a bona fide belief that there was no encumbrance on the subject vehicle.

8. On the other hand, counsel for the fifth respondent Bank as well as respondents 1 and 2 say that the fourth respondent has, fraudulently, obtained the cancellation of hypothecation.

9. I have heard the learned counsel for the parties and perused the records.

10. According to me, quite clearly, the petitioner cannot have a better title than the original owner, i.e, the fourth respondent. The fourth respondent has neither filed a counter affidavit nor is she is represented before me.

11. Counsel for the petitioner, emphatically, states before me, pursuant to leave given by this Court to serve the fourth respondent privately, service was attempted and that the fourth respondent refused to accept the service of notice. It is stated that an affidavit of service was filed with the Registry. The counsel, however, was unable to supply, immediately, the registration number or date when the affidavit of service was filed. However, notwithstanding the aforesaid circumstance, the petitioner being the dominuslitis, the risk of not having served the fourth respondent can only be his, as the petitioner has come to Court to seek relief.

12. Having regard to the aforesaid circumstances, in my view, no relief, whatsoever, can be given to the petitioner, in the present writ petition. The petitioner, if at all, can sue the fourth respondent for any fraud she may have played upon him. As alluded to above, a Civil Suit has already been filed. The relief claimed in the suit is one of permanent injunction. The petitioner clearly would have the option of either seekinig an amendment in the pending suit or, to file a fresh suit, if otherwise, permissible in law.

13. Therefore, I am not inclined to entertain the writ petition and grant any relief, whatsoever, in view of the foregoing circumstances.

14. The writ petition is accordingly dismissed. However, there shall be no order as to costs.

15. Resultantly, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Regional Transport Authority,
   Thudiyalur,
   Coimbatore North,
   Coimbatore District.

2. The Assistant Registering Authority,
   Coimbatore (North),
   Coimbatore District.

3. The Assistant Registering Authority,
   Attur - 636 102, Salem District.

+1cc to Mr.P. Jagadeesan, Advocate, S.R.No.76348
+1cc to the Government Pleader, S.R.No.76405

CA(CO)
EU 24.1.17

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