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IN THE HIGH COURT OF DELHI AT NEW DELHI
RSA No. 257/2016

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16th September, 2016

INDERJIT PAL SINGH

..... Appellant

Through: Mr. G.K. Mishra, Advocate

versus

RAJENDER MOHAN SHARMA

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent Judgments of the courts below; of the Trial Court dated 19.5.2015 and the First Appellate Court dated 6.6.2016; by which the suit filed by the respondent/plaintiff for recovery of monies has been decreed for Rs.2,01,650/- with simple interest @ 6% per annum.

2. The subject suit was filed by respondent/plaintiff pleading that he was the owner of a bus bearing registration no.DEP-6967 and which was transferred to the appellant/defendant in terms of the documentation Ex.PW1/1 to Ex.PW1/6. Possession of the bus was also delivered to the

appellant/defendant under these documents dated 12.12.1985. It is further pleaded in the plaint that while the bus was under the control and possession of the appellant/defendant being driven through his agent Sh. Nirmal Singh, the same met with an accident on 30.9.1986 with a two wheeler scooter bearing registration no.DEJ-7599 resulting in the death of the scooter driver Sh. Raghubir Parshad Gupta. As a result of the death of Sh. Raghubir Parshad Gupta in the accident, the legal heirs of Sh. Raghubir Parshad Gupta filed a claim petition before the Motor Accident Claim Tribunal and in which proceedings the respondent/plaintiff under a compromise paid a sum of Rs.1,60,000/- to the legal heirs of the deceased Sh. Raghubir Parshad Gupta. It is this amount which is claimed in the present suit from the appellant/defendant.

3. Appellant/defendant contested the suit and pleaded that he was not the registered owner of the bus nor possession of the bus was ever given to the appellant/defendant. Appellant/defendant, however, admitted his signatures on the documents Ex.PW1/1 to Ex.PW1/6 but only said that he had signed the same without reading its contents. It was also contended by the appellant/defendant that he was not in possession of the subject bus when the accident occurred and also that he had no concern with the driver Sh. Nirmal Singh who was driving the bus on the date of the accident. Suit was accordingly prayed to be dismissed as respondent/plaintiff was the registered owner of the bus.

4. The courts below have referred to the contents of agreement Ex.PW1/1 and affidavit Ex.PW1/3 and which specifically state that the possession of the bus was transferred to the appellant/defendant and who had also agreed by the affidavit Ex.PW1/3 to indemnify the respondent/plaintiff and therefore appellant/defendant is liable. The documents Ex.PW1/1 to Ex.PW1/6 admittedly were signed by appellant/defendant. These relevant aspects are dealt with by the first appellate court in paragraphs 7 to 17 and 21 of its judgment and which read as under:-

“7. The respondent/plaintiff has instituted the suit for recovery of Rs.2,80,300/- from the appellant/defendant on the ground that plaintiff/respondent has made the payment of claim amount awarded by Ld. MACT in the claim petition No.203/86 in which appellant and respondent both were party. The Ld. MACT vide order dt.19.3.1987 had directed the respondent/owner of the vehicle to pay balance of Rs.58,000/- alongwith interest @ 12% p.a. on 23.4.2005 during the execution proceedings, the respondent had compromised the matter with the claimant for a sum of Rs.1,60,000/- as full and final settlement of the claim decreed against him. The respondent had claimed the recovery of the said amount Rs.2,80,300/- alongwith interest from the appellant on the ground that the respondent had already sold the bus in question to him vide deed of agreement dt.12.10.1985 and at the time of accident the bus was being driven by driver Nirmal Singh employed by appellant. The Ld. Trial court after appreciating the evidence led by both the parties came to the conclusion that signature on the deed of agreement and other documents Ex.PW1/1 to Ex.PW1/6 has been admitted by the appellant stating that he had signed the said documents without reading its contents. Ld. Trial court held,

“a prudent man does not sign any document without reading the same atleast everyone is presumed a prudent man unless he shows that in the specific situation he could not act in a manner required of a prudent man. in the present case, no attempt has been made by the defendant (appellant herein) to establish that there was any specific situation in which he could have signed the documents without reading the contents thereof.”

8. It was further observed by the trial court that **“even otherwise, I am of the opinion that the documents are since in the nature of contract regarding sale and purchase of bus, only because of non-filing of any**

specific performance suit they cannot loose their value of being treated as evidence of the contents mentioned therein.”

9. In para No.3 of written statement in preliminary objections it was alleged that the agreement otherwise not enforceable because it was entered into between the plaintiff and the defendant much before the claim so filed and it was not enforced, therefore, the suit was not maintainable and liable to be dismissed.

10. The Ld. Trial court opined that the defendant/appellant has not brought any evidence in that regard, therefore, believed the genuineness of the documents executed by the parties. Moreover, the contents of the para No.3 of the WS clearly shows that the agreement was entered into between the plaintiff and defendant (appellant herein) but before the claim petition was filed.

11. It was further alleged on merits in the written statement that the agreement was not enforceable because it was not a registered document. In that regard I am of the considered opinion that the trial court had rightly held that there was no requirement of registration of agreement Ex.PW1/1 because an agreement/contract to sell a movable property is not required to be compulsorily registered.

12. The agreement of the deed Ex.PW1/1 from its contents shows that it was not an agreement for sale of the bus in question because it is clearly mentioned at page No.2, **“And whereas the vehicle is not transferable at present it has been agreed that party No.1 (plaintiff) shall appoint party No.2 (defendant) as his general attorney to represent him in all matters relating to the above vehicle.”**

13. Thereafter the parties further proceeded to reduce the terms and conditions in writing, term No.4 reads as under:-

“that the vehicle had been handed over to party No.2 (appellant) on 11.12.1985 with its complete registration documents which shall remain with him as trust property, returnable on demand.”

14. Term No.11 reads as under:-

“That all previous challans, claims relating to the said vehicle prior to 11.12.1985 shall be paid and settled by party No.1, thereafter, the vehicle shall be running at the risk and cost of party No.2.”

15. Further in term No.18 it was agreed that, **“from 11.12.1985 the vehicle shall be running at the risk and cost of party No.2 and he (appellant) shall be liable for all claims, challans, taxes, fines, penalties, income tax in respect of the above vehicle.”**

16. The last term No.23 reads as under:-

“that party No.2 shall always cover the vehicle under comprehensive risk and obtain insurance policy with the endorsement that all claims of third party shall be paid by the insurance company and no amount shall be recovered from party No.1 and if for any act or omission on the part of party No.2 any amount will so recovered

from party No.2 and for non payment, the same shall be recovered from the person and personal property both movable and immovable property.”

17. The General power of attorney executed by the respondent in favour of appellant is Ex.PW1/2 gives all responsibilities regarding vehicle-bus No. DEP 6967 to the appellant. The affidavit of the appellant Ex.PW1/3 in para No.6 clearly mentions as under:-

“That I shall keep the said vehicle always insured against comprehensive risk and covering all risk and procure such a policy whereby all claims of 3rd party to the paid by the insurance company alone and that under no circumstances any amount should be recovered from the registered owner. If I fail to comply with the above requirements thereby any amount of claim is preferred and any amount is recovered from the registered owner the same shall be paid by me without any objection or hesitation and for non payment thereof the said registered owner shall be at liberty to recover the said amount together with recovery charges, damages and losses from me and personal and personal property both movable and immovable.”

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21. The appellant as DW1 in his cross examination has stated that he was running a Travel Agency in the name and style of M/s Natraj Travelers of which he was proprietor; he used to operate the buses meant for tours and travels and for that purpose he used to take the buses on hire basis; a broker namely Mr. Shergil had brought the plaintiff Rajender Mohan Sharma to his office for the purpose of selling a bus to him; the deal of the bus of the plaintiff was finalized with him for the sum of Rs.2,10,000/- out of which he paid Rs.48,000/- in cash to the said broker and rest was to be paid to the bank; the deal was reduced into writing but he did not remember the nature and number of documents. In his subsequent cross examination he had admitted his signatures on all those documents Ex.PW1/1 to Ex.PW1/6. He has further admitted that M/s. Natraj Travelers was also a party in the MACT case and has filed the WS therein. It is not explained by the appellant/defendant as to why he remained party in the MACT proceedings if he had no concern with the bus in question. Admittedly, no application U/o 1 Rule 10 CPC was moved before the MACT stating that he was not necessary/proper party to those proceedings. The Ld. MACT had decreed the claim and directed the registered owner of the vehicle i.e. respondent to make the payment of the balance amount. No decree was passed against the appellant because he was not the registered owner but despite that he participated in those proceedings as proprietor of M/s. Natraj Travels and had also contested the claim petition. All these facts shows that appellant has a concern with the said bus because he was in possession of it and was running it through his driver at his own risk. The Ld. Trial court has therefore, rightly held that the appellant was liable to reimburse the plaintiff/respondent for the payment made by him to the claimant because as per agreement between appellant and respondent vide Ex.PW1/1 and the

admitted liability by the appellant in his affidavit Ex.PW1/3, it was the responsibility of the appellant to make the payment of the claim amount paid by the respondent/registered owner of the bus. The bus in question was also having a carriage permit often used for tour and travel purposes. The appellant had rightly admitted in cross examination that he was hiring the buses for the tour and travel purpose and during the said business he had got the possession of the bus of the respondent and was plying the same for the purpose of his business when it met with an accident as a result the registered owner/respondent had suffered a money decree and was made to make the payment which has been subject matter of the present suit decreed by the Ld. Trial Court.”
(underlining added)

5. It is therefore clear that appellant/defendant had executed the documents Ex.PW1/1 to Ex.PW1/6. These documents talk of possession of the bus being transferred to the appellant/defendant; appellant/defendant undertaking the liability of taking over possession of the bus which met with an accident; and that appellant/defendant was therefore liable to reimburse the respondent/plaintiff the amount of Rs.1,60,000/-, which was paid to the legal heirs of Sh. Raghubir Parshad Gupta who had died in the accident.

6(i) Learned counsel for the appellant argued that in the written statement filed in the MACT proceedings, the respondent/plaintiff did not talk of the documents Ex.PW1/1 to Ex.PW1/6 and also that as per paragraph 15 of this written statement it was stated that the appellant/defendant was not in possession of the bus and therefore the documents Ex.PW1/1 to Ex.PW1/6 have to be rejected and the stand of the respondent/plaintiff accepted that the appellant/defendant was not in possession of the bus.

(ii) In my opinion, this argument is appropriately and adequately dealt with by the first appellate court in paragraph 21 of its judgment which noted that if appellant/defendant was not a necessary party to the MACT proceedings, then there was no reason why the appellant/defendant would not move an application under Order I Rule 10 CPC to delete him from array of respondents by alleging that he was neither the owner nor in possession of the bus. In fact it is conceded before this Court that the present appellant/defendant along with the respondent/plaintiff had filed a common written statement, and thus this fact shows that there was a joint action of defence basically to defend the MACT case and that there was no issue inter se the present appellant and the respondent herein with respect to any inter se liability in the MACT proceedings.

7. In view of the above no substantial question of law arises for this second appeal to be entertained. Dismissed.

SEPTEMBER 16, 2016

VALMIKI J. MEHTA, J

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