

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18-01-2019

Judgment delivered on 15-03-2019

FA No. 246 of 2005

Shekh Rasool s/o. Shekh Ajiz, aged about 53 years, Caste Musalman, r/o.Kasam Cycle Stores, presently Rawan Bhata, Parthu Ward, Hatani Para, Bhatapara, Tah. Bhatapara, Dist. Raipur (CG).

---- Appellant/defendant No.2.

Versus

1. Pramod Kumar s/o. Shri Jawahar Tiwari agd about 45 years, r/o. Baloda Bazar presently vilalge Rohara, Tah. Simga, P./O. Rohara, Dist. Raipur (CG) (died- deleted) through LR 1(A) Smt. Sushila Devi Tiwari, w/o. Late Promod Kumar Tiwari, r/o. Village Rohara, Tahsil Simga, PO Rohara, Dist. Raipur (CG).

Respondent No.1/plaintiff

2. Krishna Kumar Sharma, s/o. Kamal Kishore Sharma, r/o. Bilaigarh, Tah. Bilaigarh, Dist. Raipur (CG).

---- Respondent No.2/defendant.

For appellants : Mr. Sachin Singh Raput, Advocate.
For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 22-9-2005 passed by 2nd Additional District Judge, Baloda Bazar (CG) in Civil Suit No. 34-A/2001 wherein the said court decreed the suit filed by the original respondent No.1/plaintiff for declaring

his ownership over truck bearing registration No. MP-L-7192 and for account of the said truck.

2) Original respondent No.1/plaintiff filed a suit before the trial Court that the truck in question was purchased by him for cash consideration of Rs.95,000/- and the appellant was his driver. It is alleged that the amount of Rs.50,000/- was paid by elder brother of original respondent No.1 Pramod Kumar and rest of the amount was arranged by him. The trial Court decreed the suit in favour of respondent No.1. As per version of appellant in the affidavit sworn in by respondent no.2, it is mentioned that the disputed vehicle was sold to original respondent No.1 and appellant/defendant No.2, but the trial Court overlooked this aspect of the matter.

3. Learned counsel for the appellant would submit as under:

- i) As the vehicle is purchased by the appellant and original respondent No.1, finding of the trial Court that it is solely owned by respondent No.1 is perverse.
- ii) The trial Court grossly erred in holding that Rs.95,000/- was paid by the respondent No.1.
- iii) The trial Court erred in deciding that suit was properly valued and proper court fees has been affixed ad valorem court fees ought to have been paid by respondent

No.1, therefore, it cannot be said that the suit was properly valued.

- iv) The trial Court failed to consider the provisions of the Motor Vehicles Act, therefore, finding of the trial Court is liable to be set aside.

Reliance has been placed in the matters of **Sathappa Chettiar vs. Ramanathan Chettiar**, reported in AIR 1958 SC 245 (V 45 C 40), **Mangilal Jain vs. M.P. Electricity Board, Jabalpur and others**, reported in MP Weekly Note (Note No. 479) page 405, 1977 -II, **Subhash Chand Jain vs. Chairmn, MP Electricity Board**, reported in 2000 (3) MPLJ 522, **Bhadrilal Bholaram vs. State of Madhya Pradesh and another**, reported in AIR 1964 MP 9 (V 51 C 3) and **Virendra Kumar Shukla vs. UCO Bank and another** decided by this Court on 21-9-2005 in W.P.No. 2645 of 2005.

4. I have heard learned counsel for the parties and perused the record of the court below in which judgment and decree has been passed.

5. The first question for consideration of this court is whether as to who really paid the consideration for purchasing the truck in question.

6. Original respondent No.1 cited himself as PW/1, Vinod Kumar (PW/2), Deepak Jaiswal (PW/3) and Sitla Prasad Tiwari (PW/4) whereas appellant cited himself as DW/1 and A. Ali (DW/2). From the evidence of Pramod Kumar (PW/1) and his other witnesses, it is established that truck in question was purchased from one Krishna Kumar Sharma for cash consideration of Rs.95,000/- on 17-4-1990. As per version of these witnesses, Vinod Kumar (PW/2) who is brother of original respondent no.1 Pramod Kumar, withdrew Rs.50,000/- from his account and gave to Pramod Kumar and again Rs.45,000/- was taken from one Deepak Jaiswal and the entire sum was paid by respondent No.1. This version is unrebutted by the evidence of the appellant/defendant side.

7. The trial Court has elaborately discussed the entire evidence and recorded finding that the entire sum is paid by the original respondent No.1/plaintiff, therefore, he is entitled to be declared owner of the truck in question. From the evidence it is also established that truck in question was seized by the Police and interim custody of truck was given to the appellant, therefore, the trial Court directed for account of the appellant for the period in which the vehicle was in possession of the appellant.

8. After re-assessing the evidence, this court has no reason to substitute contrary-finding. As the appellant has not paid cash

consideration regarding truck in question, therefore, from the evidence only inference which can be drawn that the respondent No.1 is owner of the said truck and declaration of his title, is based on evidence on record which is not liable to be interfered while invoking jurisdiction of the appeal. The trial Court has declared title only, therefore, it is not a case where ad valorem court fee ought to have been paid. Case laws cited by learned counsel for the appellant do not help to him as the same are clearly distinguishable to the facts of the present case. The appeal is liable to be dismissed.

9) Accordingly, decree is passed in favour of respondent No.1 and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellant to bear the cost of the respondent No.1 through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju