

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17.06.2019

JUDGMENT DELIVERED ON : 17.09.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1123 of 2002

1.R.Subramanian (Died)
2. Anbuchelvi
3. Arulmozhi
4.Kanimozhi
5.Arun

[Appellants 2 to 5 brought on record as LRs of the
deceased sole appellant vide order of dated 4.4.19
made in C.M.P.No.3320/19 in S.A.No.1123/2002 (TRNJ)

... Appellants/9th Respondent/9th Defendant

...Versus...

1.G.Visalakshi
2.S.Manimekalai ..R1 & R2/Appellants/Plaintiffs
3.V.Dhanabakkiyam
4.V.Vedanayakam
(R3 & R4 represented by this Power agents
1. Manoharan 2. A. Sankar)
5.V.Sivasanmugam
6.Sivaneswari
7.Indiradevi
8.Mahalakshmi
9.Selvi.Kirupa
(Minor. Rep by her guardian Arumuga Gounder)
10.Suseela Devi ... R3 to R10/R1 to R8/
Defendants 1 to 8

PRAYER:This Second Appeal has been filed under Section 100 of
C.P.C., against the judgment and decree in A.S.No.9 of 2002
dated 22.02.2002 on the file of the Additional District
Judge,Nagapattinam setting aside the judgment and decree made in
O.S.No.229 of 2000 dated 30.10.2001 on the file of the
Additional Sub-Judge, Nagapattinam.

For Appellant	::	Mr.P.V.S.Giridhar
For R1&R2	::	No appearance
For R3	::	Died
For R4,R5&R9	::	No appearance

For R6 to R8&R10 :: Mr.R.Srinivas

J U D G M E N T

The defeated 9th defendant is the appellant herein.

2. The first and second respondents herein have filed O.S.No.229 of 2000 before the Additional Sub-Judge, Nagapattinam, seeking a declaration that bus No.TN 51 3479 (now changed to TN 60 F 1000) and its route permit as joint property of the plaintiffs and defendants 1 to 8 and for consequential relief of injunction against alienation.

3. It was admitted that the registered owner of the said bus and the route permit was the third respondent/first defendant. The first respondent/first plaintiff examined herself as P.W.1, but no documents were marked on the side of the plaintiff. Evidence was not let in whatsoever to prove or establish either that the plaintiff had any right or interest over the suit property or that the suit property was the joint property of the plaintiffs and defendants 1 to 8. Defendants 1,2,4 to 6 and 8 remained exparte before the Trial Court.

4. The Trial Court after assessing the evidence on record and considering all the issues arising in the suit, dismissed the suit. The Trial Court observed that "it is for the person who claims such property to belong to the joint family, to substantiate their claim on the basis of definite and clinching proof that they have acquired the property from and out of the funds of the joint family mainly for the benefit of the joint family and that such purchase was not for the benefit of the family member concerned (i.e. The first defendant). The Trial Court further held that there is absolutely no pleading and evidence to the effect that the plaintiffs and the defendants share the profits of the bus service.

5.The first and second respondents herein (plaintiffs) filed A.S.No.9 of 2002 before the learned Additional District Judge, Nagapattinam, challenging the judgment and decree of the Trial Court. The learned Additional District Judge by his judgment dated 30.10.2001, has reversed the judgment of the Trial court on the ground that the defendants relied upon a WILL.

6. Aggrieved by the judgment and decree passed in A.S.No.9 of 2002 on the file of the Additional District Judge, Nagapattinam, the defeated 9th defendant has preferred this appeal.

7. This Second Appeal has been admitted on 11.07.2002 on the following Substantial Questions of Law:-

(i) Whether or not, the ownership of the motor vehicle (bus) be determined in terms of the provisions of the MV Act, 1988 (as indicated above)?

(ii) Whether or not, the claim of the plaintiffs (First and Second respondents) barred by the provisions of the Benami Transactions (Prohibition) Act?

(iii) Whether the principles of laws of succession/inheritance/ownership apply to a permit issued under the provisions of the MV Act?

(iv) Whether the transfer of ownership of motor vehicle/permit can be done, in violation of the provisions of the MV Act, particularly Section 50 and Section 82 thereto?

8. After hearing the arguments of the learned counsel for the appellant, the substantial questions of law (ii) and (iii) does not arise on the factual situation.

9. The first respondent and the second respondent herein filed the suit for declaration and for injunction inter-alia alleging that the plaintiffs and the defendants 2 to 6 and 8 are the sons and daughters of late Thiru.Velugounder. The 1st defendant is his wife. The 7th defendant is the daughter of his predeceased son Ulaganathan.

10. The plaint proceeds on the basis that, Velugounder went to Malaysia many years ago and out of his earnings, he purchased many properties in his native village. He purchased the bus bearing Registration No.TN O 6201 and its route permit in 1980 in the name of his third son Ulaganathan. Ulaganathan and the defendants 2 and 3 together were managing the bus service under the name 'Sri Venkateswara Bus service'. Ulaganathan died in 1989. Then, Velugounder transferred the bus route permit to the name of the 1st defendant. Velugounder died on 31.01.1998. The said bus route and another bus route permit were inherited by the plaintiffs and the defendants 1 to 8 and they are jointly operating the bus service. The 1st defendant has no exclusive right over the bus route permit with the present Registration No.TN 51 3479 standing in her name.

11. The plaintiffs have filed this suit for declaring the bus bearing Registration No.TN 51 3479 (now changed as TN 60 F 1000) and its route permit as joint property of the plaintiffs and the defendants 1 to 8 and for consequential relief and injunction against alienation.

12. The third defendant has filed written statement, wherein he has stated that the bus route along with bus is exclusive property of the first defendant and on the death of the father, namely Velu Gounder on 31.01.1998, he had sold the property along with permit to the 9th defendant and the bus and permit are not joint family property. It is a self-acquired property and his father, in turn had settled the property by transferring the bus route permit in the name of the first defendant even during his lifetime.

13. After hearing the arguments of the learned counsel for the appellant and also perusing the documents, this Court finds that it is the admitted case of the plaintiffs and the defendants 3 and 7 that Velugounder acquired many immovable and movable properties from his earnings in Malaysia. The suit bus with original Registration No.TN O 6201 and its route permit were acquired by him in the name of his 3rd son Ulaganathan. Ulaganathan died in 1989. Then, the route permit was transferred in the name of the 1st defendant. Thereafter, Velugounder died on 31.01.1998.

14. The case of the plaintiffs is that even though the permit in respect of the bus, stood in the name of the 1st defendant, it is only a joint family property belonging to the plaintiffs and the defendants 1 to 8 and the plaintiffs seek a declaration to this effect. The deceased appellant/9th defendant contended that the bus and the route permit absolutely belonged to the 1st defendant and that he has purchased the bus and route permit from the 1st defendant.

15. At this juncture, it is relevant to appreciate that the third defendant has come out with Ex.B1-copy of the Will alleged to have been executed by the Velu Gounder bequeathing all his immovable and movable properties upon the defendants 2&3. However, they have not examined any person in connection with the Will and thus, the Trial Court has rightly come to the conclusion that in the absence of non-examination of attestor of the Will by the propounder of the Will, namely the third defendant, it has rightly rejected Ex.B1-Will said to have been executed by Velu Gounder.

16. It remains to be stated that P.W.1 has admitted during the cross-examination that the second defendant has sold some properties claimed by their father and the plaintiffs have not challenged such material for the reasons best known to them. The plaintiffs being the daughters of the said Velu Gounder, have chosen to file this declaration suit to declare that the bus permit and route are the joint family property.

17. As stated supra, during the lifetime of Velu Gounder, he had transferred the bus permit to his wife, namely, the first defendant for obvious reasons in order to provide maintenance to his wife.

18. As regards the property in the name of a female member of a Hindu family, the axiomatic position is that it is not the female member who has to prove how she acquired the same and on the other hand, it is for the person who claims such property to have belonged to the joint family, to substantiate their claim on the basis of definite and clinching proof that they have been acquired from and out of the funds of the joint family, mainly for the benefit of the joint family and that such purchase was not to the benefit of the female member concerned.

19. In the present case, the suit bus service and route permit were transferred in the name of the 1st defendant during the life time of Velugounder with the consent of the defendants 2 and 3, as admitted by the third defendant/D.W.1 during the cross-examination. It clearly shows that the said transfer was made for the benefit of the 1st defendant alone. There is absolutely no pleading and evidence to the effect that the plaintiffs and the defendants 2 to 8 shared the profits of the bus service. D.W.1 has admitted during cross-examination that the 9th defendant is now operating the suit bus service after purchasing a new bus with Registration No.TN 60 F 1000.

20. In view of the above factual position, as could be seen from the admission of P.W.1 and D.W.1, this Court finds that the order passed by the Lower Appellate Court is not sustainable in law and accordingly, the finding rendered by the Lower Appellate Court stands vacated and the same is set aside and the finding of the Trial Court is that the permit of the bus was already transferred by the said Velu Gounder, even during his lifetime to his first defendant, who in turn has sold the same to the 9th defendant and the said finding is well considered and well merited and the same is in consonance with the Motor Vehicles Act and as per the Motor Vehicles Act, the term "owner" has been defined under Section 2(3) of the Motor Vehicles Act as the person in whose name the Motor Vehicles name stands registered and the admitted factual position in this case is that the permit stand in the name of the first defendant and hence, the claim of the plaintiffs that the same are joint family property, cannot be entertained, as the same is in violation of the provisions of the Motor Vehicles Act under Sections 50 and 82 and therefore, the transfer of ownership of Motor vehicle namely, the bus along with route permit by the first defendant, in favour of the 9th defendant, the appellant herein, is valid and the first defendant having obtained the transfer of permit from her husband, is duly valid and hence, the claim of the

plaintiffs/ respondents 1&2, does not stand to the legal scrutiny. The substantial questions of law (i) and (iv) are answered in affirmative in favour of the appellant.

21. In the result,

(i) This Second Appeal is allowed.

(ii) The judgment and decree of the Lower Appellate Court are hereby set aside and the judgment and decree of the Trial Court in O.S.No.229 of 2000 are restored.

(iii) No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Additional District Judge,Nagapattinam

2.The Additional Sub-Judge, Nagapattinam.

3.The Section officer

VR Section

High Court, Madras 104.

+1 CC to Mr.R.Srinivas, Advocate sr 80506

+1 CC to Mr. Giridhar & Sai, Advocate sr 80281.

S.A.No.1123 of 2002

CNR(CO)
SP(15/07/2020)