IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.12.2012

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.28815 of 2012

S.R.Ramakrishnan .. Petitioner

Vs.

1. The Deputy Transport Commissioner
   Coimbatore.

2. The Registering Authority cum
   Regional Transport Officer
   Coimbatore (South)
   Coimbatore. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari as stated therein.

For Petitioner : Mr.R.Muthukumarasamy
Senior Counsel
for M/s.K.Kalyanasundaram

For Respondents : Mr.N.Srinivasan
Additional Government Pleader

ORDER

The petitioner seeks issuance of a writ of Certiorari to call for the records on the file of the first respondent in Sa.Mu.No.1859/A3/2012, dated 5.10.2012 and the records relating to the second respondent in Na.Ka.No.48943/A2/2011, dated 2.2.2012 and quash the same.

2.1. The brief facts, according to the petitioner, are as follows: One A.K.Palanisamy, maternal uncle of the petitioner, was owning Toyota Innova Car bearing registration No.TN-38-AZ-5000. On 3.1.2011, he executed a sale-cum-delivery receipt in respect of the above stated vehicle in favour of the petitioner. He also executed a Will in respect of other properties - movable and immovable, of which we are not concerned for the present.

2.2. Based on the sale-cum-delivery receipt dated 3.1.2011, the petitioner approached Indian Overseas Bank, Gandhipuram Branch, Coimbatore and submitted a letter on 4.1.2011, undertaking to clear the dues payable to the bank in respect of the hypothecation agreement entered into on the purchase of the vehicle by A.K.Palanisamy. The bank received the said letter. The payment was made by the petitioner and the bank issued a letter acknowledging the payment of liabilities and also a notice of termination of hire-purchase agreement in Form-35. Based on these records, the petitioner, having become the owner, submitted the documents through an agent for transfer of ownership of the vehicle to his name and accordingly, there is a transfer of ownership of the vehicle, as endorsed in the registration certificate on 28.1.2011.

2.3. While the matter stood thus, on 20.4.2011, it appears one A.K.Sivasamy, who is the brother of the deceased A.K.Palanisamy, gave a complaint to the second respondent stating that the vehicle has been transferred by the petitioner based on forged documents. On receipt of such complaint, the second respondent addresses a letter to the petitioner on 26.4.2011 calling upon him to produce the registration certificate book, on the ground that there is suppression of fact of the death of A.K.Palanisamy, failing which action was sought to be taken as per law.

2.4. The petitioner, it appears, approached the second respondent and made an oral representation stating that the ownership had in fact changed during the lifetime of the said A.K.Palanisamy and there is no suppression of fact as alleged. This was not accepted by the second respondent and he passed an order on 2.2.2012 cancelling the registration granted on 28.1.2011, with a further direction to submit the consent of the legal heirs of the deceased A.K.Palanisamy and seek registration of the vehicle once again. This was challenged by way of writ petition and the Court directed the petitioner to pursue appellate remedy. Accordingly, appeal was filed to the first respondent who dismissed the appeal by an order dated 5.10.2012 and that is under challenge.

3.1. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the petitioner relying upon Section 50 of the Motor Vehicles Act, 1988 (for brevity, "the MV Act, 1988") stated that the ownership of the vehicle stood transferred on 3.1.2011 when the sale-cum-delivery receipt was issued by the said A.K.Palanisamy and on the date when the hypothecation with the bank was discharged and Form-35 was issued by the bank acknowledging the receipt of the payment in discharge of the hypothecation. It is only after transfer of ownership of the vehicle by the above stated sale-cum-delivery receipt and bank discharge that the petitioner sought for change of ownership in the registration certificate and that was recorded in terms of Section 50(1) of the MV Act, 1988. The petitioner became the owner of the vehicle on 3.1.2011 itself and it is only on 12.1.2011 the said A.K.Palanisamy died.

3.2. It is further pleaded that the first respondent has misconstrued the provision of Section 50 of the MV Act, 1988 and came to pass the order confirming the order of the second respondent cancelling the registration certificate on the premise that in terms of Section 50 of the MV Act, 1988, where the person in whose name a motor vehicle stands registered dies, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority, in such manner, accompanied with such fee, within the period prescribed. In other words, both the authorities relied upon Clause (2) of Section 50 of the MV Act, 1988. According to the learned Senior Counsel, the case of the petitioner falls under Section 50(1) of the MV Act, 1988 and not under Section 50(2) of the MV Act, 1988. He contended that the petitioner, who is a transferee, is bound to report to the registering authority the sale transfer within 30 days for recording in the certificate of registration and in case of failure to report in terms of Section 50(1)(b) of the MV Act, 1988, the consequences follow under Section 50(3) of the Act, which provides for payment of Rs.100/- as fine in lieu of action to be taken under Section 177 of the MV Act, 1988 and nothing more.

3.3. On a query raised by the Court as to the time from when the transfer of ownership is to be reckoned, the learned Senior Counsel states that though there is no specific provision under the MV Act, 1988, the provisions of the Sale of Goods Act will have to be read into the said provision, as it relates to movable property and he relied upon a decision of the Division Bench of the Bombay High Court in Kishan Pandurang Kagde v. Baldev Singh Gian Singh and another, 1977 MhLJ 1656, where an analogous provision under the Motor Vehicles Act, 1939, to wit Section 31, which is pari materia with Section 50 of the MV Act, 1988 was considered by the Division Bench on the issue as to when transfer of ownership is effected and the consequences thereon.

3.4. The learned Senior Counsel also pleaded that in the present case the finding of the first respondent that Section 50(2) of the MV Act, 1988 will apply and Form-31 should be filed is erroneous. He added that when there is a specific finding in favour of the petitioner recording sale-cum-delivery receipt issued to the petitioner by the deceased A.K.Palanisamy, all that the authority states is that because the said A.K.Palanisamy died before the date of registration, the petitioner should get appropriate orders from the Court for transfer of ownership of the vehicle, which is untenable.

4. Per contra, Mr.N.Srinivasan, learned Additional Government Pleader contends that the petitioner has suppressed the death of A.K.Palanisamy, who died on 12.1.2011, and sought for transfer of ownership of the vehicle contrary to Section 50 of the MV Act, 1988 read with Rule 56 of the Central Motor Vehicles Rules, 1989 and, therefore, the cancellation of registration is in order.

5. For better appreciation of the rival contentions, it is relevant to set out the relevant statutory provisions, which are as under:

> "Section 50. Transfer of ownership. - (1) Where the ownership of any motor vehicle registered under this Chapter is transferred, -
> (a) the transferor shall, -
> (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee;
> .....
> (b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.
>
> (2) Where -
> (a) the person in whose name a motor vehicle stands registered dies, or,
> (b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government,
>
> the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the

purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5) :

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount."

"Rule 56. Transfer of ownership on death of owner of the vehicle.-

(1) Where the owner of a motor vehicle dies, the person succeeding to the possession of the vehicle may for a period of three months, use the vehicle as if it has been transferred to him where such person has, within thirty days of the death of the owner informs the registering authority the occurrence of the death of the owner and his own intention to use the vehicle.

(2) The person referred to in sub-rule (1) shall apply in Form 31 within the period of three months to the said registering authority for the transfer of ownership of the vehicle in his name, accompanied by-

(a) the appropriate fee as specified in Rule 81;

(b) death certificate in relation to the registered owner;

(c) the certificate of registration; and

(d) the certificate of insurance."

6. The facts of the case clearly establish that the reasoning given by the second respondent as well as the first respondent does not entitle them to invoke the provisions of Section 50(2) of the MV Act, 1988, as in this case the transfer of ownership of the vehicle took place on 3.1.2011 pursuant to the sale-cum-delivery receipt. The liability under the hypothecation agreement was discharged on 4.1.2011, and based on Form-35 issued by the bank, the registration certificate was endorsed with transfer of ownership in favour of the petitioner.

7. A reading of Section 50 of the MV Act, 1988 makes it amply clear that ownership of the vehicle precedes the endorsement of transfer in the registration certificate. Once the transfer is effected by a sale-cum-delivery receipt, Section 50(1) of the MV Act, 1988 is attracted. The transfer of ownership takes effect on sale and delivery. That is the tenor of Section 50(1) of the MV Act, 1988 and there can be no other manner of interpretation. Section 50(2) of the MV Act, 1988 comes into operation only when there is no transfer of ownership of the vehicle on the date when the owner dies and there is a successor, a purchaser or a person who acquired the vehicle by any other manner, which means other than transfer of ownership as contemplated under Section 50(1) of the MV Act, 1988. In the present case, the death occurred on 12.1.2011 and the sale-cum-delivery receipt, to wit transfer of ownership, was effected on 3.1.2011. Therefore, it is a case which falls under Section 50(1) of the MV Act, 1988 and not under Section 50(2) of the MV Act, 1988.

8. Rule 56 of the Central Motor Vehicles Rules, 1989 relied upon by the respondents can be invoked only in a case when the motor vehicle continues to be with the owner who dies and there is a successor, purchaser, or a person who acquires the vehicle by any other means other than under Section 50(1) of the MV Act, 1988. It is not the case here. When apparently the sale-cum-delivery receipt has been effected on 3.1.2011, there is no question of ownership being retained by A.K.Palanisamy. On the date when the registration certificate was endorsed with regard to the transfer of ownership of the vehicle, the petitioner is the owner. When the authorities clearly accept that the sale-cum-delivery receipt was effected during the lifetime of A.K.Palanisamy, it is a clear case of transfer of ownership in terms of Section 50(1) of the MV Act, 1988. Moreover, even as per the authorities the allegations of suppression and forgery are to be concluded in the criminal proceedings. Hence, the sale-cum-delivery receipt has to be taken as valid till it is proved otherwise. As a result, the petitioner is the owner of the vehicle on transfer as on 3.1.2011. The death of the previous owner is of no consequence. It is to be noticed that the transfer of

vehicle by issuance of sale-cum-delivery receipt happens in huge volume due to exploding vehicle population. In a given situation, the erstwhile owner may leave the place after sale, or in certain case may die, as in the present case, and the transferee may not even know the whereabouts of the transferor. There is no condition that vendor/transferor has to be present at the time of recording of transfer of ownership in a sale that has happened earlier. Hence, only when the factum of death is noticed in a case falling under Section 50(2) of the MV Act, 1988, the need to follow the said procedure is required. Sections 50(1) and 50(2) of the MV Act, 1988 are meant to address two situations and cannot be clubbed.

9. The view taken by the Division Bench of the Bombay High Court in Kishan Pandurang Kagde v. Baldev Singh Gian Singh and another, 1977 MhLJ 1656 while interpreting Section 31 of the Motor Vehicles Act, 1939, which is pari materia with Section 50 of the MV Act, 1988 fortifies the view taken by this Court. Section 31 of the Motor Vehicles Act, 1939, which was interpreted by the Division Bench, reads as under:

> "31. Transfer of ownership.-(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,-
> (a) the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is effected and shall simultaneously send a copy of the said report to the transferee;
>
> (b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides, and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.
> (2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority."

While interpreting the said provision, the Division Bench held as follows:

> "The section begins with the words "Where the ownership of any motor vehicle which has already been registered is transferred, etc." That means that after there is a change in ownership, the provisions of the section have to be followed. Under clause (a) of sub-section (1),

the transferor has to report, within 14 days of the transfer, to the registering authority the fact of the transfer. Under clause (b) of sub-section (1), the transferee also has to report the fact of the transfer within 30 days of the transfer to the registering authority. The language of the section itself thus makes it clear that is is only after the ownership of the vehicle is transferred that a report has to be made to the registering authority to effect a change in the name of the owner in the certificate of registration where the name of the previous owner has been recorded. The transfer of registration thus follows the transfer of ownership and not vice versa. In other words, the transfer of ownership does not flow from the transfer of registration. The transfer of ownership does not, depend upon the transfer of registration. The object underlying the provisions in section 31 is that the registering authority must have the name of the proper person who is liable to pay taxes. Also, perhaps, in the case of an accident, the authorities must have the name of the proper person upon whom liability can be fixed for damages or compensation resulting from the accident. There is no provision in the Motor Vehicles Act which deals with the transfer of ownership of the vehicle which, like any movable property, is governed by the Sale of Goods Act. The provision in section 31 of the Motor Vehicles Act is only to the effect that after the change of ownership of the vehicle has taken place, corresponding change should be recorded in the certificate of registration, that is, in place of the previous owner the name of the new owner should be substituted. The transfer of ownership thus takes place from the date of sale and not from the date on which the name of the transferee is recorded in the certificate of registration."

(emphasis supplied)

10. The Court has no manner of doubt to hold that the transfer of ownership in this case has taken place on the date of sale-cum-delivery receipt, which was effected on 3.1.2011, and the date of recording of transfer of ownership in the registration certificate, to wit 28.1.2011, is only a procedure prescribed under the MV Act, 1988 and cannot be a ground to dispute the factum of transfer of ownership.

For the foregoing reasons, the writ petition is allowed and the orders of the respondents, which have been passed on a misreading of the above provisions, are set aside and the endorsement made on

28.1.2011 recording the transfer of ownership in favour of the petitioner stands restored. No costs. Consequently, M.P.Nos.1 and 2 of 2012 are closed.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

sasi

To:

1. The Deputy Transport Commissioner
Coimbatore.

2. The Registering Authority cum
Regional Transport Officer
Coimbatore (South)
Coimbatore.

1 cc to Mr.K. Kalyanasundaram, Advocate, Sr. 73956
1 cc to Government Pleader, Sr. 73821

W.P.No.28815 of 2012

KU (CO)
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