

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI  
AND  
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1918 of 2019  
and  
C.M.P.No.13071 & 13073 of 2019

M.Murali

Appellant

Versus

1. The State Transport Appellate  
Tribunal, Chepauk, Chennai.

2. The Regional Transport Authority,  
Dharmapuri.

3. V.Premavathi

Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this court dated 30.4.2019 in W.P.No.25203 of 2017.

Prayer in W.P.No.25203 of 2017 : Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent made in M.V. Appeal No.132/2016 dated 29.06.2017 modifying the order of the 2nd respondent in proceedings R.No.A3/16974/2015 dated 29.07.2016 and dismissing the appeal with regard to the transfer of permit is concerned and to quash the same.

For appellant : Mr.V.T.Gopalan Senior Counsel for  
Mr.K.Hariharan

For RR1 and 2 : Mr.N.Srinivasan, AGP  
For R3 : Ms.Susanna Prabhu

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

M.Murali, son of Mr.Munusamy Mudali, who is said to be working as Manager in the Transport business of one Mr.Vimalan husband of the Respondent Mrs.V.Premavathy. Mr.Vimalan

unfortunately expired on 30th October 2014 in quick succession after his son Dheeran passed away 14.10.2014. Mr.Murali has filed the present intra-court Appeal aggrieved by the order passed by the learned Single Judge dismissing his writ petition in W.P.Nos.25203 of 2017 on 30th April 2019.

2. The Stage Carriage Permit which stood in the name of Mr.V.Vimalan, the husband of the Respondent Mrs.V.Premavathy, in respect of the Bus bearing Registration No.TN 45 BB 3789 was issued by the Secretary, Regional Transport Authority for plying Bus on the route from Dharmapuri to Aiyur via Pulikarai, Palacode, Rayakottai, Kelamangalam, Denkanikottai from 30.10.2014 till 6.7.2019 and it was sought to be transferred in the name of the Petitioner/Appellant, Mr.Murali on the application filed by him on the basis of an alleged Agreement said to have been executed by Mr.Vimalan in his favour. The said application came to be rejected by the Regional Transport Authority concerned and the Permit in question stood transferred in the name of Premavathy, a legal heir, upon the death of her husband Mr.Vimalan on 30.10.2014.

3. The learned Single Judge held that the respondent V.Premavathy had withdrawn her consent which was fraudulently obtained by Murali for such transfer of permit in favour of the Appellant/Petitioner Mr.M.Murali and therefore, according to Rule 212 of the Tamil Nadu Motor Vehicles Rules, 1989, the transfer proceedings were liable to be dropped and no such transfer could be effected. The learned Single Judge, therefore, directed that the original documents and the Stage Carriage Permit be returned by the Regional Transport Authority concerned to the respondent, Mrs.V.Premavathy within a period of two weeks from the date of receipt of that order to enable her to ply the vehicle upon the permitted route.

4. Aggrieved by the said order Mr.M.Murali has filed the present intra- court appeal before this court.

5. Learned Senior Counsel Mr.V.T.Gopalan has urged before us that the Respondent V.Premavathy was not entitled to withdraw her consent in this regard and under the Agreement executed by her husband Mr.Vimalan in favour of the Appellant/Petitioner, Mr.M.Murali to transfer the Stage Carriage Permit in question in favour of the Appellant. The Respondent-Regional Transport Authority was bound to effect such transfer as the Stage Carrier Permit is a specie property and is transferable to a third party by the holder thereof. He relied upon the decision of the learned Single Judge of this court in the case of N.Krishnaswami Reddiar v. T.Sivagananam Pillai in O.S.No.46 of 1961 by Justice Venkatraman wherein at page 62, the learned Single Judge has observed as under:-

"So far as Rules 199-A and 200(a) are concerned I have necessarily to pronounce on the validity of

these Rules in so far as they might be construed as enabling the first defendant to bring about a dropping of the proceedings of transfer under Rule 199-A and revocation of the permit under Rule 200(a). I have no doubt that the first defendant cannot be allowed to bring about such a result and to that extent the Rules will be invalid and ultra vires."

6. The learned Senior Counsel, therefore, urged that the relevant Rule 212 is identical to the provision referred to in the above referred decision of the learned Single Judge in the aforesaid case and therefore, the withdrawal of the consent by the Respondent V.Premavathy is of no consequence and the Stage Carriage Permit ought to have been transferred in favour of the Appellant/Petitioner, Mr.Murali.

7. Per contra, the learned Additional Government Pleader Mr.N.Srinivasan submitted that Rule 212 is a valid piece of legislation in respect of withdrawal of consent by the transferor and therefore, the learned Single Judge was justified in relying upon the same and reversing the transfer in favour of the Appellant/Petitioner by the order impugned in the writ petition and the writ petition has been rightly dismissed by the learned Single Judge.

8. Ms.Susana Prabhu, the learned counsel for the private Respondent Premavathy has also submitted before us that the Appellant/Petitioner Mr.M.Murali misled her to sign certain documents after the death of her husband and as soon as she came to know the purported transfer sought by the Appellant for the Stage Carrier Permit in question in his own favour, she attended the proceedings before the Regional Transport Authority concerned and gave her withdrawal of consent in writing as well as affirmed the same during the course of hearing before the Authority concerned. She further submitted that the Stage Carrier Permit in question has been rightly transferred in favour of the Respondent V.Premavathy in accordance with the Rules as upon the death of the permit holder, the same is expected to be transferred in favour of the legal heir. She has further submitted that the Petitioner/Appellant M.Murali is plying the bus with the documents in the name of the respondent V.Premavathy for last many years and has not accounted for any receipts in favour of the respondent, Premavathy so far. She has further brought to our notice the pendency of the bare injunction suit filed by the petitioner appellant M.Murali in O.S.No.97/2016 which is pending on the file of the District Munsif, Dharmapuri, wherein, an order of injunction was obtained by the Appellant as against the respondent V.Premavathy injuncting her not transfer the Stage Carrier Permit in question to any third party.

9. We have heard the learned counsels at length and perused the records. We are satisfied that there is no merit in the present appeal of Mr.M.Murali and the same deserves to be dismissed. Firstly, the contention of the learned Senior Counsel for the Appellant that Rule 212 has already been declared to be ultra vires needs to be noted. The portion of the judgment of the learned Single Judge in Civil Suit in O.S.No.46 of 1961 N.Krishnasamy Reddiar v. T.Sivagnanam Pillai extracted above cannot be read out of context. The learned Single Judge in that Suit was dealing with the situation where the first defendant was held to be not entitled to withdraw such consent in the facts of that case and the court has, therefore, observed incidentally that if Rule was to support such a withdrawal, it is invalid and ultra vires. In the said judgment, we do not find any discussion on the constitutionality or otherwise of the said Rule being discussed by the learned Single Judge.

10. In contractual matters, whether the consent has been given or not or it has been withdrawn or not is a question of fact which has to be established with the relevant evidence. We are of the considered opinion that in such cases, properly instituted civil suits is the only remedy to prove the consent having been given or not given or withdrawn. While arriving at such finding of facts, without examining the question of validity of Rule independently on its own merits, as to whether the Rule in question is constitutionally valid or not, any observation made by the learned Single Judge in the above referred judgment cannot be held to be a binding precedent as if it is striking down the Rule itself.

11. Admittedly, in the present case, no challenge is made on the constitutionality of Rule 212 by the Petitioner/Appellant, Mr.M.Murali. We are satisfied that a prima facie reading of Rule 212 itself does not even expose it to such a possible challenge. The Rule merely says that the Authority concerned viz., the Regional Transport Authority shall drop the transfer proceedings as soon as consent for such transfer is withdrawn before the transfer is sanctioned. Unless a decree in this regard is obtained by the person concerned that the defendant is bound by such earlier consent given to the plaintiff and cannot go back on it, the Authority concerned is not expected to still act upon any agreement to effect transfer of Stage Carrier Permit in favour of the plaintiff.

12. We are not concerned with the issue of transferability of the Stage Carrier Permit because admittedly, it is a

transferable document as canvassed by the learned Senior Counsel, but, the question which arose or arises for our consideration is whether, in the facts of the case, the consent for such transfer can be withdrawn or whether upon such withdrawal of such consent, the Regional Transport Authority concerned is still bound to act upon the earlier agreement alleged to have been executed by the husband of the private respondent in favour of the Petitioner/Appellant and continue with the transfer proceedings notwithstanding Rule 212 standing on the Statute Book.

13. Rule 212 very much exists on the Rule Book and despite the observation made in the case of N.Krishnaswamy Reddiar by the learned Single Judge of this court which we treat only as an obiter and therefore, we restrict such obiter of the learned Single Judge to the facts of that case only.

14. It is relevant to note that the relevant provision viz., Rule 212 in the present case has been brought in the existing Motor Vehicles Rules, 1989 framed under the Motor Vehicles Act, 1988 much after the aforesaid observations of the learned Single Judge in the case of N.Krishnaswamy Reddiar (supra) (in 1961) but, as explained above, the observation of the learned Single Judge is nothing more than an obiter and it does not amount to declaration of the then existing Rule or its pari materia Rule 212 now as ultra vires or unconstitutional.

15. Coming to the facts of the present case, we are of the considered opinion that the learned Single Judge cannot be said to have erred at all in dismissing the writ petition on the basis of the withdrawal of consent by the private respondent, Mrs.V.Premavathy and directing the Respondent- Regional Transport Authority to return the original Stage Carriage Permit in question to the Respondent V.Premavathy which stood transferred in her favour upon the death of her husband.

16. We are little surprised that despite the documents being in favour of the respondent Mrs.V.Premavathy, the Petitioner/Appellant M.Murali has continued to enjoy the fruits of such Stage Carriage Permit and plying of the Bus in question for the last ten years, however, he has not accounted for the receipts of the same in favour of the respondent Mrs.V.Premavathy which she is entitled and free to claim the same in accordance with law.

17. In the above circumstances, we dismiss the present appeal filed by the Appellant, Mr.Murali with costs of Rs.50,000/- to be paid by the Appellant/Petitioner to the respondent Mrs.V.Premavathy and we also direct him to return the documents and papers with the Bus in question to the respondent Mrs.V.Premavathy forthwith not later than in two weeks from today and also account for all the receipts of earning from the said Bus using the Stage Carrier Permit for the last ten years, to the respondent. The respondent, Mrs.V.Premavathy shall also be free to institute separate legal proceedings in the civil court for recovery of the same from the appellant, M.Murali. The connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

ssk.

To:

1. The State Transport Appellate Tribunal, Chepauk, Chennai.
2. The Regional Transport Authority, Dharmapuri.

+1cc to Mr.K.Hariharan, Advocate SR.No.53004

+1cc to Ms.Susanna Prabhu, Advocate SR.No.53212

+1cc to Government Pleader SR.No.52861

W.A.No.1918 of 2019

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PP(CO)  
GMY(10/07/2019)