



S.A(MD).No.454 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.454 of 2021
and C.M.P(MD)No.6194 of 2021

1.New Somasundari Transport
Through its partner,
Jawahar Ali

2. Jawahar Ali

3.Razik ali

4.Zeenath Nazeera Begum

.... Appellants/Appellants
in A.S.No.35 of 2017, Respondents in
A.S.No.52 of 2017/Defendants

Vs.

Sayeedha Beevi

... Respondent/Respondent/Appellant in A.S.No.
52 of 2017 and A.S.No.35 of 2017/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 18.03.2019 passed in A.S.Nos.35 and 52 of 2017 on the file of the IV Additional District Judge, Tirunelveli by allowing the appeal in A.S.No.52 of 2017 decreeing the suit in O.S.No.123 of 2010 on the file of the Additional Subordinate Court, Tirunelveli dated 05.04.2016.



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For Appellants : Mr.S.Vasikali
for Mr.D.Nallathambi
For Respondents : Mr.M.P.Senthil

J U D G M E N T

This Second Appeal has been filed challenging the judgment and decree of the courts below. The defendants in the suit are the appellants herein. The suit in O.S.No.123 of 2010 was filed by the respondent to direct the defendants 2 and 3 to surrender the possession of Lorry bearing Reg. No.TN-74-6465 and to direct the defendants 2 and 3 to render proper accounts for the collections made by them in respect of the Lorry from December 2007 to the plaintiff.

2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The case of the plaintiff is that the plaint schedule Lorry bearing Reg.No.TN-74-6465 absolutely belongs to her. According to the plaintiff, her husband Rajab Mohaideen, who managed a transport business, died on 02.10.2000. According to her, after his death, the defendants 2 and 3 were managing her lorry transport business. According to the plaintiff, she delivered the Lorry to the defendants 2 and 3 for their use on condition that



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the defendants shall pay the plaintiff a monthly hire of Rs.10,000/-.

According to the plaintiff, neither the monthly hire was paid nor the Lorry was returned back to the plaintiff by the defendants despite several reminders sent by the plaintiff. In such circumstances, the plaintiff has filed the suit in O.S.No.123 of 2010 on the file of the Additional Sub Court, Tirunelveli, seeking the aforementioned reliefs.

4. However, as seen from the written statement filed by the defendants, they claim that the Lorry does not belong to the plaintiff but belongs to a person by name Fathima Beevi. According to the defendants, by way of various installments a total sum of Rs.6,32,000/- was paid by the defendants 2 and 3 to the plaintiff and only in view of the payment of the said sum, the suit lorry was given to the defendants 2 and 3 by the plaintiff. They have denied the allegations of the plaintiff that they are liable to pay a monthly hire of Rs.10,000/- to her. They also contended that the suit schedule Lorry was not used by them for any commercial purpose for the last 4 years.

5. Based on the pleadings of the respective parties, the following issues were framed by the trial court:



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- a) Whether the plaintiff is entitled for return of suit schedule Lorry from the defendants 2 and 3?
- b) Whether the defendants 2 and 3 are liable to render true and proper accounts in respect of the suit schedule Lorry for the usage by them from December 2007 onwards?
- c) Whether the suit is maintainable?
- d) To what other reliefs?

Additional issue was framed by the trial court which is follows:

- i) Whether the suit is liable to be dismissed for non-joinder of necessary parties?

6. Before the trial court, the plaintiff filed 12 documents, which were marked as Ex.A.1 to Ex.A.12. One witness was also examined on the side of the plaintiff namely the plaintiff Sayeetha Beevi as P.W.1. On the side of the defendants, no documents were filed but two witnesses were examined namely D.W.1 and D.W.2. The trial court namely, the Additional Sub Court, Tirunelveli in O.S.No.123 of 2010 by its judgment and decree dated 05.04.2016 granted the relief of recovery of possession of the Lorry bearing Reg.No.TN-74-6465. But however, rejected the relief of rendition of accounts in respect of the said Lorry sought for by the plaintiff.



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7. Aggrieved by the refusal to grant the relief of rendition of accounts

by the trial court, the plaintiff has filed a first appeal and the lower Appellate Court has reversed the findings of the trial court and has also granted the relief of rendition of accounts in favour of the plaintiff by its judgment and decree dated 18.03.2019 passed in A.S.No.35 of 2017.

8. The reasons given by the lower Appellate Court for granting the relief of rendition of accounts in favour of the plaintiff are as follows:

- a) The defendants have admitted in their written statement that the suit schedule Lorry is only in their custody;
- b) The defendants 1 to 3 have also admitted through their oral evidence that the suit schedule lorry is being used by them with the consent of the plaintiff;
- c) In the counter filed in I.A.No.224 of 2007 in O.S.No.3 of 2007 (Ex.A.6), it was made clear that the possession of the suit lorry is with the defendants and they have to pay a monthly hire charges of Rs.10,000/- to the plaintiff;
- d) The trial court by considering all the aforementioned facts has granted the relief of recovery of possession of the suit lorry in favour of the plaintiff;



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e) No documentary proof has been produced by the defendants to prove that the plaintiff has received an amount of Rs.6,32,000/- in total from the defendants by way of installments.

9. Only based on the oral and documentary evidence available on record, the lower Appellate Court has rightly granted the relief of rendition of accounts also in favour of the plaintiff as sought for in the plaint. The trial court having granted the relief of return of lorry to the plaintiff without any basis has rejected the relief of rendition of accounts sought for by the plaintiff in the suit. When it has been proved that the defendants have enjoyed the benefit of the Lorry for the purpose of their transportation business and earning income out of the same and it is established that the plaintiff is the absolute owner of the said lorry, the trial court ought to have granted both the reliefs as sought for in the plaint but has erroneously granted the relief of return of lorry alone but has refused to grant the relief of rendition of accounts. The lower Appellate Court has rightly in the impugned judgment and decree passed by it has granted both the reliefs as sought for in the plaint.



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10. It is well settled that the right to seek rendition of accounts is recognized in law in administration, suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against Trustee(s), suit by a member of a joint family against the kartha for partition and accounts, suits by a co-sharer against other co-sharer(s) who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the fund of the minor. In the case on hand, the defendants are the beneficiaries of the subject Lorry and the same has been given to them on monthly hire basis by the plaintiff, the said fact has been proved through oral and documentary evidence available on record. Therefore, when the defendants have not returned the Lorry and have not paid the monthly hire charges of Rs.10,000/- per month, the plaintiff is entitled to seek the relief of rendition of accounts in respect of the subject Lorry which has been rightly granted by the judgment and decree of the lower Appellate Court. Having come to the conclusion that the plaintiff is entitled for return of the lorry, the trial court ought to have granted the relief of rendition of accounts also but erroneously it has refused to grant the same.



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11. For the foregoing reasons, this Court will have to uphold the judgment and decree of the lower Appellate Court by confirming its findings. The substantial question of law raised by the appellants in the grounds of appeal are all issues, which have been already considered by the lower Appellate Court in its judgment and decree dated 18.03.2019 passed in A.S.No.35 of 2017 and therefore, there is no scope for further interference by this Court under Section 100 C.P.C. There are no debatable issues of fact or law involved for further consideration by this Court under Section 100 CP.C.

12. In the result, there is no merit in the Second Appeal. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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To,

1.The IV Additional District Judge, Tirunelveli

2. The Additional Sub Court, Tirunelveli.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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