

Joy Abraham Vs. Salim

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Court : Kerala

Decided On : Oct-10-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Joy Abraham

Respondent : Salim

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR FRIDAY, THE 10TH DAY OF OCTOBER 2014 18TH ASWINA, 1936 WP(C). No. 5226 of 2004 (V) ----- PETITIONER: ----- JOY ABRAHAM, S/O. ABRAHAM, KALAPURAYIL HOUSE, VAZHAKULAM, MUVATTUPUZHA. BY ADV. SRI.P.P.JACOB RESPONDENT(S): ----- 1. SALIM, S/O. KANDALAM, KOMBANAPARAMBIL, THODUPUZHA VILLAGE, THODUPUZHAKARA, THODUPUZHA.

2. THE REGIONAL TRANSPORT OFFICER, OFFICE OF THE TRANSPORT OFFICE, MUVATTUPUZHA.

3. THE SUB INSPECTOR OF POLICE, VAZHAKULAM POLICE STATION, VAZHAKULAM, MUVATTUPUZHA. R2 & R3 BY GOVERNMENT PLEADER SMT.LILLY K.T. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-10-2014, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: mbr/ WP(C).No. 5226 of 2004 (V) -----
APPENDIX PETITIONER(S)' EXHIBITS: ----- EXHIBIT-P1:
TRUE PHOTOCOPY OF THE AGREEMENT TRANSFERING THE VEHICLE TO
THE FIRST RESPONDENT. EXHIBIT-P2: TRUE COPY OF THE NOTICE
ISSUED BY SUB REGIONAL TRANSPORT OFFICE TO THE PETITIONER
DATED2412.99. EXHIBIT-P3: TRUE COPY OF THE TERMINATION LETTER
ISSUED FROM MOTOR AND GENERAL FINANCE LTED. TO THE PETITIONER
DATED263.02. EXHIBIT-P4: TRUE PHOTOCOPY OF PROTEST COMPLAINT
FILED BY PETITIONER BEFORE THE MAGISTRATE COURT, DATED191.2001.
EXHIBIT-P5: TRUE COPY OF LETTER SUBMITTED BY PETITIONER BEFORE
THE REGIONAL TRANSPORT OFFICER, MUVATTUPUZHA DATED111.2001.
EXHIBIT-P6: TRUE COPY OF THE DEMAND NOTICE ISSUED BY SUB
REGIONAL TRANSPORT OFFICE, MUVATTUPUZHA TO THE PETITIONER
DATED192.2001. EXHIBIT-P7: TRUE COPY OF DEMAND NOTICE ISSUED BY
REGIONAL TRANSPORT OFFICE, MUVATTUPUZHA TO THE PETITIONER
DATED221.2004. RESPONDENT(S)' EXHIBITS: - NIL
----- /TRUE COPY/ P.A. TO JUDGE mbr/
A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.5226 of 2004
..... Dated this the 10th day of October, 2014

JUDGMENT

The petitioner has approached this Court through the above writ petition being aggrieved by the demand of Motor Vehicle tax made on him for the period from 01.10.1996 to 31.03.2001 and 01.04.2001 to 31.12.2003. It would appear that during the pendency of the writ petition, the tax for the period from 01.10.1996 to 31.03.2001 was already paid. The case of the petitioner in the writ petition is that he had sold his vehicle to the 1st respondent on 16.10.1995 and, thereafter, the vehicle was in the possession and ownership of the 1st respondent. He would also state that he had given an intimation to the 2nd respondent, of the fact of transfer of the vehicle but, despite the said intimation, the respondents were insisting on a payment of tax for the period subsequent to the date of transfer, from him instead

of proceeding against the 1st respondent to whom the vehicle was sold. Exts.P6 and P7 demand notices issued to him by the 2nd respondent are impugned in the writ petition.

2. A counter affidavit has been filed on behalf of the 3rd respondent wherein, the details of the steps taken by the 3rd respondent to trace out the vehicle that was said to be transferred W.P.(C).No.5226 of 2004 -2- are narrated. It is also pointed out that when steps were taken to make enquiries with the purchaser of the vehicle it was understood that he had since sold the vehicle to some other person and there had been subsequent transactions of sale of the said vehicle as well. It is pointed out that insofar as the registered owner of the vehicle continued to be the petitioner, notwithstanding the sale stated to have been effected by him, the proceedings for recovery of tax were also continued against the petitioner .

3. I have heard Sri.P.P.Jacob, the learned counsel for the petitioner as also the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the liability to pay tax in terms of the Kerala Motor Vehicle Taxation Act, 1976 is on the person who is the registered owner of the vehicle or a person having possession or control of a motor vehicle. Section 9 of the Kerala Motor Vehicle Taxation Act makes it clear that where the tax leviable in respect of any motor vehicle remains unpaid and such person, before payment of the tax, has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the W.P.(C).No.5226 of 2004 -3- vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the tax. Sub Section (2) of Section 9 states that nothing contained in Sub Section (1) shall be deemed to affect the liability to pay tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle. A reading of the Section would clearly indicate that registered owners of vehicles have a liability to pay tax in terms of the Act and this liability does not cease to exist by the mere fact of transfer of ownership. For the liability to actually cease, the transfer has to be intimated to the registering authority and the change of ownership

effected in the records of the registering authority. A detailed procedure has been provided for under Section 50 of the Motor Vehicles Act read with Rule 55 of the Central Motor Vehicle Rules for effecting the change in ownership in the records before the registering authority. While a reading of the said provision would indicate that it is for the transferee of the vehicle to approach the registering authority to get the registration of the vehicle changed in his name, subsequent to a transfer of ownership, the provisions also indicate that there are certain responsibilities attached to the transferor as well. The transferor is obliged, in terms of Rule 55 of the Central Motor Vehicle Rules, to report the fact of transfer in Form 29 to the registering authority concerned, in whose jurisdiction the transferor and transferee W.P.(C).No.5226 of 2004 -4- reside or have their place of business. This provision in the Rules is intended to safeguard the rights of the transferor in the event of a transferee not taking steps to effect the change, in the registration certificate issued in respect of the vehicle, to reflect the transaction that has taken place. Once the transferor complies with the procedure contemplated in Rule 55 of the Motor Vehicle Rules, then he effectively alerts the registering authorities to the fact of transfer of the ownership of the vehicle and thereby puts them on notice of the fact that he is no longer in the ownership, control or possession of the vehicle. In my view, in order to avoid the liability to tax in respect of a vehicle that has already been sold by the owner of the vehicle, it would be incumbent upon the transferor to follow the procedure mandated under the Rules, if he seeks to avoid any liability to tax in respect of the vehicle subsequent to its sale. In the instant case, although the petitioner would state that an intimation was given to the 2nd respondent, this fact is disputed by the 2nd respondent and further it is not in dispute that the procedure contemplated under Rule 55 of the Central Motor Vehicle Rules was not followed in the instant case. In that view of the matter, I am constrained to hold that the demand of tax against the petitioner for the period from 01.04.2001 to 31.12.2003 must be sustained. W.P.(C).No.5226 of 2004 -5- Resultantly, the writ petition fails and is accordingly dismissed. A.K.JAYASANKARAN NAMBIAR JUDGE mns W.P.(C).No.5226 of 2004 -6-