Mathew Varkey Vs. Abraham

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Court : Kerala

Decided On : Nov-16-2000

Reported in : AIR2001Ker98

Judge : K.S. Radhakrishnan and; G. Sasidharan, JJ.

Acts : Sale of Goods Act, 1930 - Sections 14

Appeal No. : A.F.A. No. 52 of 1990

Appellant : Mathew Varkey

Respondent : Abraham

Advocate for Def. : S.V. Balakrishna Iyer, Adv.

Advocate for Pet/Ap. : D.S. Warrier and; M.C. Sen, Advs.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. This is an appeal filed by the plaintiff. Suit was for damages. According to the plaintiff, defendant sold an Ambassador Car DHB 8043 to the plaintiff on 6.8.1972 fora sum of Rs. 13,750/-. He purchased the car in good faith, though defendant had not transferred the registration in the name of the plaintiff. Plaintiff was made

to believe that defendant had the right to sell the car. While the car was in possession of the plaintiff it was seized by the Delhi Police on 25.9.1972 to be produced before the Court of JM TIS-Hassari, Delhi in Crime No. 181 of 1972 charged against one Nazir Ahammed on the ground that the car was a stolen property. According to the plaintiff, the car was seized from Muvattupuzha in the presence of the defendant and due to seizure plaintiff sustained damages as a result of the breach of warranties and conditions relating to the sale. Plaintiff lost the car as well as its quite enjoyment. It is the case of the plaintiff that the defendant had no title over the car so as to pass on the plaintiff at the time of sale, thereby plaintiff was disabled from making any claim of ownership over the car in the criminal proceedings or in any court. Plaintiff therefore could only file suit for damages against defendant.

2. Defendant denied the sale of the car. it is also his case that he has not accepted any consideration from the plaintiff. According to him it is his mother-in-law who purchased the car and sold to one Damodaran Pillai who sold it to the plaintiff. The suit was initially decreed on 28.9.1976 by the trial court for an amount of Rs. 13.750/- with 6% interest from the date of suit. Matter was taken up in appeal before this court vide A.S. No. 92 of 1977. A Bench of this Court vide its judgment dated 23.2.1982 remanded the matter back to the trial court to enable plaintiff to amend the pleading that the car was lost due to want of title to the vendor. Plaintiff amended the plaint and case was subsequently heard and the Sub Court again decreed the suit on 18.11.1982 for an amount of Rs. 13,750/- with 6% interest from defendant. Defendant filed appeal, A.S. 100 of 1983 before this Court. This Court allowed the appeal on 29.3.1990 setting aside the judgment of the lower court. Aggrieved by the judgment and decree this appeal has been preferred.

3. Counsel for the appellant-plaintiff Sri. M.C. Sen referred to the oral evidence of plaintiff, PW. 10 who deposed in support of his pleadings in the plaint. Plaintiff deposed that he believed the defendant because of his official capacity as the Motor Vehicle Inspector at Muvattupuzha. He entrusted the defendant the blank form and the registration book for the purpose of transferring the registration in his name. According to him, on 25.9.1972 the Delhi Police came to Muvattupuzha and seized the car. Ext. A5 is the seizure memo dated 25.9.1972 given by the Delhi

Police. PW. 4 is the S.I. of Police, Angamali who was also present. He deposed that the inspector, Crime Branch, Delhi who came to seize the car told him that it was the defendant who purchased the car from Delhi. Later Inspector from Delhi and PW. 4 together went to see the defendant. Alt these factors would indicate involvement of the defendant, according to the counsel for the appellant-plaintiff.

4. Counsel also placed reliance on S. 14 of the Sale of Goods Act and contended in a contract of sale, unless the circumstances of the contract are such as to show adifferent intention there is an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. There is also an implied warranty that the buyer shall have and enjoy quite possession of the goods and that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the lime when the contract is made. Counsel also referred to a decision of the Lahore High Court reported in 1925 Lahore 366(2) (Radha Kishan v. Ganga Bishan).

5. Counsel for the defendant-respondent Sri. S.V. Balakrishna Iyer resisted the argument of the counsel for the appellant and submitted that the plaintiff cannot be allowed to contend that the car has been lost to him by reason of want of title to the vendor, who was the defendant. According to the counsel, the mere fact that the car has been seized in a case may not be sufficient to show want of title to the plaintiff. Counsel submitted in the absence of any proof that plaintiff had lost title to the vehicle he is not entitled to claim damages. Counsel submitted this question has been specifically considered by this Court in A.S. 92 of 1977 and this Court remanded the matter giving opportunity to the plaintiff to amend the plaint. Counsel submitted that the plaintiff had not succeeded to adduce any evidence to show that plaintiff had lost title to the vehicle or in the alternative defendants had title to the property. Counsel also made reference to a decision of the Supreme Court in Jasraj Indersingh v. Hemraj Multanchand, AIR 1977 SC 1011 as well as a judgment of this Court in Rugmini Amma v. Abdulla, 1986 KLT 769. Counsel submitted that if the plaintiff fails to comply with the terms of the remand order this court hearing the matter on a second occasion cannot discard the earlier finding of

the Division Bench in the remand order.

6. We are of the view that we have to decide this question first before going into other disputed facts. If we find the plaintiff has failed to comply with the terms of the remand order this Court in this appeal should respect the findings of the co-ordinate authority, the matter rest there. Therefore we need not dwell upon the various contentions raised by either side.

7. We may therefore examine the scope of the earlier order passed by this Court in A.S. 92 of 1977. We may extract the relevant portion.

'The court below granted a decree to the plaintiff rejecting the defendant's contention that he did not sell the car. That finding is very seriously challenged in this appeal. Reference is particularly made to the fact that even the evidence adduced shows that the defendant sold she caron receiving a telegram Ext. A1 informing that the car might be sold expediliously. We arc not going into the question because another aspect of this matter which is relevant in this case is that the plaintiff would get the value of the car only if the plaintiff has a case that the car has been lost by reason want of title in the vendor. The mere fact that the car has been seized in acase may not be sufficient to show want of title. No one can assume that at the instance of a third party there would be no seizure. Ultimately the question will depend on whether the vendor has title to pass. If he had not, the question is whether in the circumstances of the case, the plaintiff was entitled to the damages. In the absence of a categorical case that the plaintiff lost title to the vehicle the plaintiff may not be entitled to damages. In other words, merely because there was some disturbance to the plaintiffs possession not al the instance of the defendant himself but by the reason of a seizure the plaintiff may not be entitled to claim damages The counsel for the plaintiff prayed that opportunity for better pleading may be given. We think in the circumstances of the case, it is necessary that there should be proper pleading and also that opportunity be given to parties to adduce evidence to support such pleadings. We think this must be permitted in the interest of justice. Accordingly we set aside the decree of the court below and remand the case back to that court to enable the plaintiff to amend the pleadings within one month lime from the date on which the case is

posted in the court below for the appearance of the parties. If no such amendment is sought the matter may be disposed of afresh without any further opportunity being given to adduce evidence.'

After remand the plaintiff filed I.A. 1692/82 for amendment of the plaint and sought to incorporate the following amendment to the pleadings:

'The defendant sold that car to the plaintiff representing that he purchased car from Delhi for consideration. The plaintiff's information is that the said consideration was paid by the defendant from the amounts belonging to him remaining in Bank Deposit in the name of his wife in the Federal Bank, Kolencherry. But he had not obtained any title whatsoever so as to pass on such title to me. He did not make any claim of ownership over the car before the police at the time of the seizure of the car. As such me plaintiff has been disabled from making any claim of ownership over the car before the police or in the criminal proceedings that followed especially when the defendant is taking the stand that he had not sold the car to the plaintiff at all. The plaintiff has lost that car as well as its quite enjoyment. Therefore the plaintiff is entitled to claim the damages shown below.'

Counter affidavit was filed by the defendant against petition for amendment stating as follows:

'In the amendment sought for, the direction by the Honourable High Court is not adhered to. No case is pleaded in the amendment that plaintiff lost title to the vehicle. No categorical case is set up that the plaintiff lost title. The case set up in the amendment is that I had not obtained any title, so as to pass on such title to the plaintiff. The direction of the Hon'ble High Court is that the plaintiff obtained title and the plaintiff lost it by the seizure in the Criminal Case. As the plaintiff has not set up any such plea, the amendment sought for cannot be allowed. Now the plaintiff is disclaiming ownership which was set up in the Hon'ble High Court. A new and inconsistent case is thrust in under the guise of amendment. The new case set up is diametrically opposed to the directions of the Honourable High Court.'

The court below however, allowed the amendment and decreed the suit, which was reserved by this Court in A.S. No. 100 of 1983.

8. We may examine the question whether the plaintiff had complied with the direction of the Division Bench in the remand order. We noticed that Division Bench of this Court in judgment dated 23.2.1982 felt that plaintiff would get the value of the car only if the plaintiff has a case that the car has been lost by reason of want of title in the vendor. The court held that the mere fact that the car has been seized in a case may not be sufficient to show want of title. Division Bench held ultimately the question would depend upon whether the vendor has title to pass. If he had not, the question is whether in the circumstances of the case, the plaintiff was entitled to damages. The effect of the direction of the Division Bench was that unless and until plaintiff is able to prove loss of title plaintiff would not be entitled to claim damages. We noticed, in this case, car was seized by the Delhi Police. In order to claim damages plaintiff has necessarily to plead that title over the car has been lost. We are of the view, this has not been pleaded or proved by the plaintiff. We noticed in the amendment petition it is stated that the defendant had not obtained any title whatsoever so as to pass on such title to the plaintiff and the defendant did not make any claim of ownership over the car before the police at the time of seizure of the car. Consequently plaintiff has lost the car. There is no pleading to the effect that plaintiff had lost title. In other words, we have to again proceed as if plaintiff has got title to the car. If plaintiff has got title and car was seized by the police no damages could be claimed from the defendant. The plaintiff is therefore bound by the findings of the earlier Division Bench.

9. We are therefore of the view that this Court in this proceeding is bound by the findings of the Division Bench in A.S. 92 of 1977. The Supreme Court in AIR 1977 SC 1011 (supra) has examined the scope of a remand order by the High Court and its legal effect. The Court held as follows:

'In an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court

of co-ordinale authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is so because the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial Court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject matter available for adjudication before the Supreme Court. If, on any other principle of finality statutorily conferred or on account of res judicala attracted by a decision in an allied litigation the matter is concluded the Supreme Court too is bound. Otherwise, the whole lis for the first time comes to the Supreme Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law bythe Supreme Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality'

This decision was subsequently followed by a single Judge of this Court in 1986 KLT 769 (supra). The learned Judge stated as follows:

'What I feel as the root question that has to be decided by me on this aspect is whether the High Court can in these proceedings (in this second appeal) say that the findings in the remand order are wrong. I think this Court cannot do it. Only an appellate court or a court of review can consider the correctness of the decision rendered by Viswanalha Iyer, J. in S. A. No. 482 of 1973. This is clear from what I have quoted from AIR 1960 SC 941. It has to be noted that the Supreme Court has very clearly stated that a higher Court alone can decide the correctness of an earlier decision which was a step in the process of the final adjudication of the case. Of course, the case considered by the Supreme Court was thecaseof an interlocutory order. I think I can safely rely on the decision reported in AIR 1977 SC 1011 (Jasraj v. Hemraj) which gives a conclusive answer to the point raised by the counsel for the appellant. In paragraph 14 of the judgment, the Court observed:-

'Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is

equally true that the same High Court, hearing the matter on a second occasion or any other court of co-ordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is the correct view of the law'.

Certainly this Court is hearing the matter on a second occasion and I cannot discard the earlier finding of Viswanatha Iyer, J. in the decision in S.A. No.482 of 1973. Ihave to hold against the appellant in regard to the subsidiary question raised by the counsel for the appellant.'

We are of the view the above mentioned principle is squarely applicable to the facts of this case. In this case earlier Division Bench in A.S. 92 of 1977 held that plaintiff would get the value of the car only if the plaintiff has a case that the car has been lost by reason of want of title in the vendor. It is also held that in the absence of a categorical case that the plaintiff lost title to the vehicle the plaintiff may not be entitled to damages. We are of the view, plaintiff has no such case that he lost title to the vehicle. In the petition for amendment, there is absolutely no averment to establish the same as well. In the absence of any pleading and in the absence of any evidence we are of the view that this court in this jurisdiction cannot discard the earlier ruling of the Division Bench. We therefore hold that the plaintiff cannot successfully lay a claim for damages against the defendant in the absence of any pleading or proof thereof that he had lost title to the vehicle. In view of this finding we need not go into other disputed questions of facts.

We therefore concur the finding of the learned Single Judge and dismiss the appeal. In the circumstances of the case we order no costs.