

K. Kumar Vs. Tmt. Poomani,

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Court : Chennai

Decided On : Oct-28-2009

Reported in : (2009)8MLJ1006

Judge : H.L. Gokhale, C.J. and ;N. Paul Vasanthakumar, J.

Acts : Tamil Nadu Motor Vehicles Taxation Act, 1974 - Sections 82(3); Tamil Nadu Motor Vehicle Rules, 1989 - Rules 212, 214 and 279

Appeal No. : W.A. No. 1511 of 2009 and M.P. No. 1 of 2009

Appellant : K. Kumar

Respondent : Tmt. Poomani, ; the State Transport Appellate Tribunal and the Regional Transport Authority

Advocate for Def. : K.M. Venugopal, Adv. for R1 Raja Kalifulla, GP for R2 and R3

Advocate for Pet/Ap. : V. Raghavachari, Adv.

Disposition : Appeal allowed

Judgement :

H.L. Gokhale, C.J.

1. Heard Mr. V. Raghavachari, learned Counsel in support of this appeal. Mr. K.M.Venugopal, learned Counsel appears for the contesting respondent No.

1/caveator. Mr. Raja Kalifulla, learned Government Pleader appears for respondents 2 and 3.

2. The appeal seeks to challenge the order passed by a learned Single Judge, whereby the learned Single Judge has set aside the order passed by the second respondent - State Transport Appellate Tribunal, which in turn had set aside the order passed by the third respondent - Regional Transport Authority.

3. The short facts leading to this appeal are this-wise:

The appellant and the respondent No. 1 are brother and sister respectively. The respondent No. 1, who is presently aged about 40 years, is his eldest sister and she got married long back. The father of the appellant and the respondent No. 1 was running a transport business and he owned two buses. He executed a Will on 13th December 2006 saying that this business, after his death, will devolve on the appellant herein. He died on 12th February 2008. Subsequently, the appellant had applied for transfer of permit and his mother and sisters, including the first respondent, gave their consent on 22nd February 2008. It appears that the first respondent withdrew her consent on 18th March 2008, which is the case of the appellant herein. The case of the first respondent is that her signature had been taken by force. The appellant's application for transfer of permit was, therefore, turned down by the original authority, i.e. the respondent No. 3. The appellant filed an appeal to the second respondent. The second respondent allowed that appeal and directed that the permit be transferred in favour of the appellant.

4. Being aggrieved by that order, the first respondent filed a writ petition, which has been allowed by the learned Single Judge and, therefore, this appeal has been filed by the appellant herein.

5. Mr. Raghavachari, learned Counsel for the appellant, points out that under the relevant Rules, viz., The Tamil Nadu Motor Vehicle Rules, 1989 (for short 'the Rules'), all that is required is that the party applying for transfer of permit on death of the permit holder, has to produce No Objection Certificate from all the legal heirs, which has been done in the instant case. That is the requirement of Rule 214 of the Rules. He points out that after necessary documents were submitted,

the first respondent changed her stand. Initially, she submitted that her signature was taken by unlawful means and by force. Subsequently, she contended that her signature was fabricated. The learned Counsel pointed out that therefore the appellate authority went into all these aspects and allowed the transfer under Rule 214. The learned Single Judge, however, referred to Rule 212 of the Rules and took the view that the respondent No. 1 had withdrawn her consent before the order for transfer of permit was passed. According to Mr. Ragavachari, the view of the learned Judge is erroneous. Rule 212 has no application to the facts of this case. Rule 214 is the relevant Rule. He also points out that a suit has been filed by the respondent No. 1 and subject to the decision in the said suit, in the meanwhile, the permit ought to be allowed to be transferred, which is what the appellate authority has done.

6. Mr. Venugopal, learned Counsel appearing for the respondent No. 1, on the other hand, submitted that Rule 212 is the relevant Rule. Since the consent had been withdrawn, the permit could not have been transferred and the view taken by the learned Single Judge is right.

7. The relevant Rules, viz., Rule 212 and Rule 214 of the Rules read as follows:

212. Withdrawal of consent for transfer.:

When the consent of either or both the parties to the transfer of a permit is withdrawn before transfer is sanctioned, the Transport Authority shall drop further proceedings in regard to the transfer of that permit:

Provided that, when either of the parties withdraws such consent, the Transport Authority shall, before dropping such proceedings inform the other party of the withdrawal of consent.214. Transfer of permit on death of permit holder.:

(1) An application for the transfer of permit under Sub-section (3) of Section 82 shall be accompanied by the fee specified in the Table under Rule 279 together with the certificate of death of the permit holder issued by the competent authority a heirship certificate issued by an officer of the revenue department not below the rank of a Tahsildar and "No Objection Certificate' from all the legal heirs other than

the applicant, if there are more than one legal heir to the deceased permit holder. If in such cases, the permit has been endorsed or extended under the provisions of these rules, the endorsement or extension shall cease to have effect on the date of transfer unless the Transport Authority which granted the endorsement or extension directs that it shall be continued.

(2) If the Transport Authority allows the transfer of the permit, it shall call upon the applicant to produce, within four months from the date of receipt of the order sanctioning the transfer, the certificate of registration of the vehicle with the particulars of the transfer of ownership of the vehicle stated thereon together with valid certificate of fitness and proof for the payment of the current tax under the Tamil Nadu Motor Vehicles Taxation Act, 1974 (Tamil Nadu Act 13 of 1974) and the permit. In the event of the applicant failing to produce the relevant records within the period of four months aforesaid, the transport authority shall revoke the sanction.

(3) The Transport Authority may delegate the power conferred upon it under Sub-rule (2) to its Secretary in cases where the Secretary has sanctioned the transfer of permit.

(4) The powers referred to in Sub-rule (2) shall also be exercisable by the appellate or revisional authority, as the case may be, if the transfer of permit is allowed by such authority.

8. Now as can be seen from these two Rules, Rule 212 deals with the transfer, which is transfer inter vivos. Rule 214 in terms provides for a transfer in the event of the death of the permit holder. This being so, it will be Rule 214, which will apply. Inasmuch as all necessary documents were tendered, the authority concerned was expected to pass the necessary order. As already stated, the suit is pending between the parties. In that suit, the respondent No. 1 has sought a declaration that the Will is inoperative, bad in law and that it should not be acted upon. That will be decided in the suit.

9. Mr. Raghavachari, learned Counsel appearing for the appellant, states that he will maintain the account. At the highest, in the event the respondent No. 1

succeeds, she will have a 20% share, since there are three daughters, one son and a widow left behind by the deceased. This will take care of the interest of the respondent No. 1.

10. Therefore, the writ appeal is allowed. The order passed by the learned Single Judge is set aside. The order passed by the appellate authority stands restored. The permit will be transferred accordingly. Consequently, the connected miscellaneous petition is closed. There will be no order as to costs.

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