

**Raju Vs. M/S. Ahdhavan Bankers Represented by Manager**

**Raju Vs. M/S. Ahdhavan Bankers Represented by Manager**

**SooperKanoon Citation :** [sooperkanoon.com/934844](http://sooperkanoon.com/934844)

**Court :** Karnataka

**Decided On :** Feb-06-2012

**Judge :** Anand Byrareddy

**Appeal No. :** REGULAR FIRST APPEAL No. 1333 OF 2011

**Appellant :** Raju

**Respondent :** M/S. Ahdhavan Bankers Represented by Manager

**Advocate for Pet/Ap. :** For the Appellant: D.R. Sundaresha, Advocate. For the Respondent: M.S. Rajendra Prasad, Senior Counsel for M/s. M.S. Rajendra Prasad and Associates, Advocates.

**Judgement :**

(Prayer: This Regular First Appeal is filed under Order-41, Rule-1 Section 96 of Code of Civil Procedure, 1908, against the judgment and decree dated 06.07.2011 passed in O.S. No.27079/2009 on the file of the IV - Additional City Civil And Sessions Judge, Mayo Hall Unit, Bangalore City, ordering the plaint to be returned for presentation before the proper court having jurisdiction for the suit of the mandatory injunction.)

1. The appeal coming on for admission, is considered for final disposal having regard to the facts and circumstances. The appeal is therefore admitted.

2. Heard the learned counsel for the appellant and Shri M.S. Rajendra Prasad, the learned Senior Advocate appearing for the counsel for the respondents.
3. The present appeal is against a judgment under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for brevity) returning the plaint to be presented before the proper court having jurisdiction. The learned counsel for the appellant however would contend that though it is innocuously worded as the plaint having been returned to be presented before the court having jurisdiction, the entire gamut of issues have been addressed by the Court below and therefore, it cannot be construed as merely a return of the plaint but would be a rejection of the plaint and therefore, an appeal would be under Order XLI of Rule 1 of the CPC.
4. The facts are as follows. The plaintiff is said to have purchased a bus which was being plied as a tourist vehicle under a permit, bearing registration No. KA-01 AD 6066. The plaintiff had also availed of a loan from the defendant in a sum of Rs5,00,000/- by creating a hypothecation in respect of the vehicle, agreeing to pay a monthly installment of Rs32,000/- towards repayment of the loan. It was admitted by the plaintiff that for good reason, he was unable to pay installments for the months of August and September 2009, in a total sum of Rs64,000/-. On the other hand, he had repaid a sum of Rs2,91,682/- as on the date of the suit, namely 20.10.2009. It was the case of the plaintiff that he had explained to the defendant of his financial difficulties and had requested extension of time to pay the installments for the months of August and September 2009. Though the defendant had agreed to grant such time, the defendant had unilaterally proceeded to forcibly take custody of the bus when it was parked on the Tank Bund Road in Bangalore without prior notice to the plaintiff. The plaintiff immediately, on learning the said act on the part of the defendant, approached the defendant and requested that there be a reconsideration of its act and to return the vehicle. The defendant refused to release the vehicle, even after receiving the amounts due for the months of August to October 2009. On the other hand, the defendant demanded repayment of the entire loan amount outstanding, in order to release the vehicle. It is in this background that the appellant was before the Trial Court seeking the relief of mandatory injunction directing the defendant to release the said vehicle

after receiving the equated monthly installments for the period from August to October 2009 and for a permanent injunction restraining the defendant from alienating the said vehicle. The defendant on receipt of summons in the suit, had entered appearance and had contended that the agreement between the parties conferred jurisdiction on the Court of Gudiyatham in Vellore District, Tamil Nadu and therefore, the present suit was not maintainable as being without jurisdiction. Secondly, it was contended that the defendant had availed a loan by executing a 'Hire Purchase Agreement' and had created a charge over the vehicle in question and in terms of the agreement, the defendant was the owner of the said vehicle during the term of the Hire Purchase Agreement. The plaintiff having admittedly defaulted in payment of the instalments in spite of remainders, the defendant was well within the right to act in terms of the agreement. This aspect of the matter had been suppressed by the plaintiff. Thereafter, the court below had proceeded to frame issues and the plaintiff had tendered evidence by way of affidavit and was examined as PW-1 and documents in support of his case were marked as Exhibits P1 to P7. The defendant in turn had also tendered evidence and marked documents Exhibits D1 to D3. The court below, on consideration of the pleadings, had framed the following issues:

“1. Whether the plaintiff can restrain the defendant from alienating the suit schedule vehicle?

*2. Whether the plaintiff is entitled for the Mandatory injunction claimed?*

*3. Whether this court has no territorial jurisdiction to try the suit?*

*4. What decree or order?”*

And has held Issue Nos. 1 and 2 in the negative and Issue No. 3 in the affirmative. Insofar as Issue No. 1 is concerned, after reiterating the contentions, it has opined that the plaintiff had failed to prove that he was in a position to restrain the defendant from alienating the vehicle. Insofar as issue No.2 is concerned, the court below has rejected the plaintiff's claim for mandatory injunction on the ground that there was an admitted default in repayment of the loan. On the Issue No.3, it is found that the court at Gudiyatham, Vellor District had jurisdiction and

therefore, the Court below had no territorial jurisdiction since the agreement between the parties restricted such jurisdiction. The court below has answered the issues as above and has returned the suit to present it before the proper court having jurisdiction.

5. In the above circumstances, the learned counsel for the appellant would point out that the court below has proceeded in a summary fashion in addressing the facts of the case which give rise to serious consequences. He would firstly point out that as a matter of fact, the vehicle was worth much more than `5,00,000/-. The loan was only a partial amount comprising the value of the vehicle. A charge was created only in respect of the loan transaction. Even if there was default on the part of the plaintiff, the remedy available to the defendant was to enforce the agreement in seeking recovery of monies due under the loan transaction. It did not enable the defendant to take law into his own hands and to forcibly seize the vehicle and sell it at its whim and fancy at a price that is not known to the plaintiff, thereby depriving the plaintiff of his valuable property purportedly in recovery of a nominal amount of the remaining loan amount. This was hardly sustainable even if it could be accepted that there was default on the part of the plaintiff in repaying the outstanding amount. The learned counsel would submit the insofar as hire purchase agreements and consequence of a breach of the hire purchase agreement not enabling the debtor to claim equity, has been dealt with in a catena of decisions by the Supreme Court as well as other High courts and would rely on the decision in the case of *TarunBhargava vs. State of Haryana and another* (AIR 2003 Punjab and Haryana 98), which has referred to several judgments of the Supreme Court in laying down the law and the learned counsel would draw particular attention to Paragraph 12 which reads as follows:

*“12. Hire purchase agreement is the one under which an owner hires goods to a hirer, giving the hirer an option to purchase the goods. On the other hand, when a person borrows money and pays it to vendor, transaction between the customer and the lender will be a loan transaction. In a hire purchase agreement, the hirer is under no obligation to buy. Where the customer is himself the owner and with a view to finance his purchase, he enters into an arrangement in the form of hire purchase agreement, it will be a loan transaction. The present petitioner is not a*

*dealer of motor vehicles, but is in independent business of finance. The vehicle purchased is in the name of the complainant and the complainant is the real owner of the vehicle. Moreover, in quashing proceeding averments made in the complaint have to be accepted as correct, which states that the complainant was the owner and if the accused petitioner wants to dispute this averment and claims that the complainant was not the owner, such an averment cannot be accepted, particularly when the agreement appears in substance to be a loan agreement. Similar agreement was considered by the Supreme Court in Sundaram Finance Ltd.s case (AIR 1966 SC 1178) (supra), wherein the majority view was that such an agreement would be a loan agreement. Shah J. on behalf of the majority observed as under:*

*“It is also to be noted that the agreement does not contemplate exercise of an option on payment of a nominal sum of money as is to be found in other hire purchase agreements. Execution of the promissory note, the hire purchase agreement and the other documents, in our judgment indicate that it was the intention of the parties not to transfer any interest in the vehicle by the customer to the appellants: it was intended to give security by hypothecating the vehicle in favour of the appellants and for ensuring repayment of the loan advanced that the customer submitted to the various onerous conditions of the hire purchase agreement .....*”

*“In the light of these principles the true nature of the transactions of the appellants may now be stated. The appellants are carrying on the business of financiers: they are not dealing in motor vehicles. The motor vehicle purchased by the customer is registered in the name of the customer and remains at all material times so registered in his name. In the letter taken from the customer under which the latter agrees to keep the vehicle insured, it is expressly recited that the vehicle has been given as security for the loan advanced by the appellants. As a security for repayment of the loan, the customer executes a promissory note for the amount paid by the appellants to the dealer of the vehicle. The so-called ‘sale letter’ is a formal documents which is not made effective by registering the vehicle in the name of the appellants and even the insurance of the vehicle has to be effected as if the customer is the owner. Their right to seize the vehicle is merely a licence to*

*ensure compliance with the terms of the hire purchase agreement. The customer remains qua the world at large the owner and remains in possession, and on condition of performing the covenants has a right to continue to remain in possession. The right of the appellants may be extinguished by payment of the amount due to them under the terms of the hire purchase agreement even before the dates fixed for payment. The agreement undoubtedly contains several onerous covenants, but they are all intended to secure to the appellants recovery of the amount advanced. We are accordingly of the view that the intention of the appellants in obtaining the hire purchase and the allied agreements was to secure the return of loans advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financing transactions.”*

As well as paragraph 32 that summarises the law in regard to hire purchase agreement reads as follows:

*“32. I may now summarise my conclusions as follows:-*

*A) A hire-purchase agreement may in substance be a loan transaction and the label of such an agreement is not conclusive. It is open to the Court to determine whether a particular agreement is a loan transaction or a hire-purchase agreement. The parameters to be applied are laid down, inter alia, in the judgment of the Supreme Court in Sundaram Finance Ltd.s case. AIR 1966 SC 1178 (supra). In the present case, the agreement though termed as hire purchase agreement, is held to be a loan agreement for the reasons already mentioned.*

*B) In a loan agreement for financing goods on hypothecated basis the creditor cannot forcibly repossess the hypothecated item, though he can enforce the security through the Court.*

*C) If a specific clause is inserted in a agreement authorizing repossession if a vehicle or any other goods by the bypothecatee, such a clause may be unconscionable, unless otherwise shown by the hypothecatee and such a clause inserted in the present case is held to be void. In the present agreement, Clause 4 and Clause 7 permitting forfeiture of installments already paid will be deemed to*

*be void.*

*D) Forcible repossession without intervention of the Court may involve commission of an offence and what offence has been committed will depend on facts of an individual case, the judgments of the Supreme Court in hire purchase cases holding that in a hire purchase agreement, the owner cannot be guilty of theft of his own property, will not be applicable to cases where the transaction is, in substance, a loan transaction, as in a loan transaction, the ownership will be a borrower and the principle applicable to a hire purchase agreement will not apply.*

6. The learned counsel would also place reliance on a more recent unreported decision of the Apex Court in Citicorp Maruti Finance Limited. Vs. S. Vijayalaxmi dated 14.11.2011. The said case pertained to a forcible seizure and subsequent sale by the Financial institution, of a motor car on default of payment of monthly installments, under a hire-purchase agreement. The Apex Court on a review of the case law, has taken notice of the directions issued by the Apex Court in ICICI Bank Limited Vs. Prakash Kaur (2007) 2 SCC 711, pursuant to which the Reserve Bank of India had formulated operational guidelines for adoption by commercial banks. It was also noted that other Financial institutions were following the process of arbitration in order to recover the dues. It was also noted that if the transactions constituted loan agreements, it is the regular process of Civil law or arbitration proceedings that should be resorted to for recovery monies.

7. The learned counsel would further submit that since the Trial court has addressed the basic contentions of both the parties, the return of the plaint. If at all, ought to have been done in the first instance, at the threshold. The Court after allowing both the parties to submit their pleadings, having framed issues and having allowed the parties to tender evidence and thereafter having given its findings on the several contentions, could not hold that the plaint was being returned for presentation to the appropriate court. The Court thus having arrived at findings, it was an exercise in futility to direct the plaintiff to approach the court having jurisdiction. The learned counsel would therefore submit that the present appeal is hence competent. Secondly, it is pointed out that the very finding that the Trial Court did not have jurisdiction also may not be the correct legal position.

Notwithstanding the agreement specified that the Court at Gudiyatham, Vellore District would have jurisdiction, the fact remains that the circumstances indicate that both the parties were residing within the jurisdiction of the Trial Court and the agreement had been executed at Bangalore, and the vehicle was registered at Bangalore. The mere fact that the agreement specifies that the jurisdiction was only at Gudiyatham, Vellore District and the parties had conferred jurisdiction on the Court at Gudiyatham at Vellore District, did not take away the jurisdiction of the competent court which would otherwise have had jurisdiction, as is evident from the present case on hand. He would hence submit that the parties cannot contract out of law if the law conferred the jurisdiction on the court below in the facts and circumstances of the case and therefore, his endeavour to point out that the Trial Court did not lack jurisdiction even though the parties had willfully conferred jurisdiction on the Gudiyatham Court. Hence, he would submit that the Trial Court was in error in proceeding to entertain the suit in the year 2009 and thereafter return it as on 6.7.2011 on the ground that it should be presented before the appropriate court. This itself is unjust and unfair and hence, warrants interference by this Court. He would further submit that the defendant having proceeded to act on his own on the contention that there was a breach of agreement and having proceeded to even bring the vehicle to sale for an unknown price to a third party, has certainly acted unlawfully and illegally to the detriment of the plaintiff and having regard to the legal position, it is warranted that the suit be decreed in favour of the plaintiff which the court below has miserably failed to do, for reasons which cannot be sustained in law.

8. While the learned Senior Advocate appearing for the counsel for the respondent - defendant would seek to justify the judgment and would offer to place all the particulars of the transactions that have been subsequently entered into insofar as the vehicle is concerned. He would seek to sustain the finding of the court below that there was justification of the defendant having acted in the manner that it has and in any even, it is for the appellant - plaintiff to re-present the plaint before the appropriate court and to adjudicate on the matter on merits. Since the plaint has been returned for presentation to the proper court, it cannot be said that there is a judgment and decree which is capable of being questioned in appeal and the appeal itself is not maintainable even though it is contended that for all purposes, it

should be treated as an appeal since the order passed by the court below is in the nature of a judgment and decree, though on the face of it, it is not.

9. Therefore, in the above peculiar facts and circumstances of the case, the striking feature is that the court below has thought it fit to deal with the pleadings of the parties as in a regular suit, which has run its course to the final stage and thereafter has thought it fit to return the plaint to be presented before the appropriate court having jurisdiction. This was not fair to the plaintiff. The question of jurisdiction could have been addressed as a preliminary issue and even if the court was in doubt, that ought to have been decided in the first instance and thereafter the court could have left the plaintiff to his remedies. Since the Court had taken upon itself to address the merits of the rival contentions and thereafter has even arrived at findings of fact, could not have in the operative portion of the order, indicated that the plaint was to be returned to be presented before the proper court. This is certainly irregular and results in a miscarriage of justice. It is in that vein that this Court would seek to interfere and set at naught the order passed by the court below.

10. On the question of jurisdiction, as rightly pointed out by the learned counsel for the appellant, even though parties have conferred jurisdiction on the Court of Gudiyatham, having regard to the facts and circumstances, if the facts and circumstances enabled yet another competent court to exercise jurisdiction, it cannot be said that the court has been deprived of jurisdiction merely because the parties have contracted out of such jurisdiction. Given the facts and circumstances that admittedly the defendant has its Branch Office at Bangalore, the contract was entered into at Bangalore, the vehicle was registered at Bangalore which was also seized by the defendant at Bangalore, it would be difficult to hold that a competent court at Bangalore would not have jurisdiction in respect of the cause of action. Therefore, the said question of jurisdiction is reversed insofar as the Trial Court has held that it does not have jurisdiction. It would then be necessary to direct that there be a fresh consideration of the lis between the parties from the stage of arguments on the pleadings and evidence that was tendered in order that the court may give its findings afresh on the merits of the case and mould the relief if necessary insofar as the plaintiff is concerned, in accordance with law. The appeal

therefore is allowed in part. The question of jurisdiction is decided as aforesaid and the Trial Court is directed to deal with the matter in terms as above. The judgment and decree is set aside. The case is remanded for a fresh consideration in the light of the observations made hereinabove.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**