

Saraswathy Bus Service Vs M. Cibiraj rep. by his next friend, M. Jayanthi and M. Jayanthi

Court: Madras High Court

Date of Decision: Nov. 7, 2007

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151

Constitution of India, 1950 â€” Article 227

Motor Vehicles Act, 1988 â€” Section 94

Tamil Nadu Motor Vehicles Rules, 1989 â€” Rule 213

Citation: (2007) 6 MLJ 1813

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: M. Palani, for the Appellant; K. Kannan, for R. Sunilkumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

These revision petitions are filed under Article 227 of the Constitution of India against the order of the learned Fast Track

Court Judge dated 19.01.2006 made in I.A. Nos. 1367 and 1940 of 2005 respectively in O.S. No. 13 of 2004.

2. The revision petitioner being the Managing Partner of M/s. Saraswathi Bus Service, Erode, is claiming to be purchaser of the bus bearing

Registration No. TN.28.C.4488 running between Mohanur to Poolampatty route along with its permit from the second defendant in the suit. The

suit which was filed originally in Sub-court, Sankari as O.S. No. 312 of 1995, which was subsequently transferred to the Fast Track Court, Salem

and re-numbered as O.S. No. 13 of 2004, was filed by one Minor Cibiraj, represented through his mother and next friend Jayanthi, who is also

the second plaintiff, for partition and allotment of 3/8th share including the division of 3/8th share in the bus service, lorries, spare bus, cars, etc.

The first defendant in the said suit, viz., Marimuthu, who died on 03.10.2005, is the husband of the second plaintiff Jayanthi and father of the first

plaintiff Minor Cibiraj. The second defendant in the suit, viz., Saraswathi, who also died on 24.02.2004, is the mother of the first defendant

Marimuthu and mother-in-law of the second plaintiff. That apart there are other defendants. The suit properties consist of many items comprised in

A, B, C, and D Schedules. In the ""D"" Schedule, first item of property is the bus having registration No. TN.28.C.4488, running between Mohanur

to Poolampatty. The route permit stood transferred in the name of transferee and in spite of the same, the purchaser was not made as a party to

the suit.

3. The plaintiffs filed I.A. Nos. 1367 and 1940 of 2005 under Order 6 Rule 17 read with Section 151 of the CPC (in short ""CPC"") respectively

for amendment of the plaint, which were allowed by the trial Court, against which, the revision petitioner, being the purchaser of the bus bearing

registration No. TN.28.C.4488, has filed the above revision petitions. The revision petitioner has clearly restricted his claim in respect of the said

bus alone, which is stated as Item No. 1 in ""D"" Schedule on the basis that by way of amendment, the plaintiffs sought to state that the first

defendant in the suit is in possession and enjoyment of the same, including the other suit properties after the death of R. Saraswathi.

4. According to the revision petitioner, by allowing the said amendment, a false averment has been stating as if, after the death of R. Saraswathi,

second defendant in the suit, from whom the petitioner has purchased the bus along with the permit, has handed over the permit as well as the bus

to the first defendant in the suit, which is factually incorrect.

5. Mr. Palani, learned Counsel appearing for the petitioner would vehemently contend that the petitioner is vitally affected by the introduction of a

patently false case in the pleadings knowing very well that he is the purchaser of bus route from second defendant Saraswathi, and has been in

enjoyment of the bus as well as permit and in spite of the same, a false impression has been made as if the bus as well as the permit still belongs to

the first and second defendants. According to the learned Counsel for the petitioner in both the revision petitions, as far as the motor vehicle, which

is the bus mentioned as Item-1 of ""D"" Schedule property, the same can be the subject matter of the final decision in the partition suit. However,

when once the permit in respect of the route between Mohanur to Poolampatti has been transferred to the petitioner in accordance with the

provisions of the Motor Vehicles Act, 1988 (in short, ""M.V. Act""), the said permit becomes an independent property right other than the right of

ownership over the bus, and therefore, the petitioner became absolute owner of the permit, which cannot be in any event permitted to be included

in the partition suit.

6. To substantiate the above said contention, learned Counsel for the petitioner would submit that pursuant to the sale of the bus, Mrs. Saraswathi,

the deceased second defendant in the suit along with the petitioner and other partners have jointly applied for grant of permission for transfer of

permit in respect of the stage carriage TN.28.C.4488 plying on the route Mohanur to Poolampatti via. Namakkal, Thiruchengode, Sankari,

Sunnambukuttai and Edapadi on 26.02.2003 along with various other documents necessary for transfer. The Regional Transport Authority, Salem,

being the quasi judicial authority constituted u/s 86 of the M.V. Act, after elaborate enquiry, by exercising his powers u/s 82(1) of the M.V. Act

read with Rule 208 to 213 of the Tamil Nadu Motor Vehicles Rules, 1989, has allowed the joint application for transfer of permit in respect of the

said bus from the name of Mrs. R. Saraswathi to the name of the petitioner. It is also his further case that it was as against the order of the Regional

Transport Authority, Salem, the first plaintiff, through his mother Mrs. Jayanthi, viz., the second plaintiff, has filed a statutory appeal before the

State Transport Appellate Tribunal, Chennai and the appellate Tribunal also after elaborate discussion of the entire legal issue, has dismissed the

said appeal. Therefore, according to the learned Counsel for the petitioner, when once the authority contemplated under the M.V. Act exercising

quasi judicial power has held that the transfer of permit effected by Mrs. Saraswathi, second defendant in favour of the petitioner herein is in

accordance with law, the Civil Court is barred from having any jurisdiction as per Section 94 of the M.V. Act, and therefore, according to him, the

trial Court ought not to have allowed the applications for amendment in respect of bus, which has been finally settled by the statutory authorities

under the M.V. Act. He has also made it very clear that the permit given to the motor vehicle is different from vehicle itself, because as per the

terms of permit, when once permit has been given to one vehicle it can be transferred to other vehicle and therefore, permit is different and distinct

from the property, viz., bus.

7. On the other hand, Mr. K. Kannan, learned Counsel appearing for the respondents would submit that what was effected was only an

amendment and there is no final decision on any issue and there is no question of interference by this Court by exercising jurisdiction under Article

227 of the Constitution of India, when it is always open to the petitioner to raise objections in the suit. He would further submit that it is not correct

to state that the bus is different from permit. The second defendant Mrs. Saraswathi, was claiming right and ownership over the bus, which is the

subject matter of dispute in the partition suit along with the route permit for running the bus, and therefore, the second defendant's right over the

bus along with the route permit is in issue and there is no question of separating the bus and route permit. He would also submit that the issue

involved in the suit is, as to whether the suit properties are ancestral properties or not. If it is held that the suit properties are ancestral properties

and ultimately if the Court comes to the conclusion that the bus also forms part of the ancestral properties, necessarily the said bus has to go along

with the permit as a property. The bus without permit is of no use and in fact the second defendant Saraswathi has been running the bus along with

the permit and it cannot be said that the said Saraswathi can sell the bus separate from permit. He would also submit that at this stage Article 227

of the Constitution cannot be exercised, preventing the trial Court from proceeding with the trial, in which all defences are open to the parties.

8. Mr. Palani, has relied upon various judgments, including the judgment of the Andhra Pradesh High Court in Labhala Samanthakamani Vs. The

Court of District Munsif and Others, and Rajasthan High Court in Hazarilal v. Additional Sr. Sub-Judge, Hissar and Ors. II (1994) ACC 262, to

substantiate his contention that Section 94 of the M.V. Act is a bar for the suit and the civil Court has no jurisdiction to entertain any question

relating to the grant of permit. He has also relied upon an un-reported judgment of D. Raju, J. (as he then was) in C.R.P. No. 1052 of 1982 dated

15.04.1994.

9. On the other hand, Mr. K. Kannan, learned Counsel for the respondents would rely upon the judgment of the Supreme court in D.

Ramachandran Vs. R.V. Janakiraman and Others, , to say that even while exercising the powers under Order VI Rule 16 and Order VII Rule 11

of the Code of Civil Procedure, the Court cannot dissect pleadings into several part and strike out a portion which does not disclose cause of

action.

10. I have heard the learned Counsel for the petitioner as well as respondents and perused the entire records.

11. At the outset, it is clear that the dispute in these revisions are surrounding the bus bearing registration No. TN.28.C.4488 as well as its permit.

There is no much dispute that the second defendant in the suit has sold the bus along with the permit and the transfer has been effected and the

authority under the M.V. Act has granted the transfer, which was opposed by the plaintiffs and the same was dismissed by the State Transport

Appellate Tribunal, thereby making the transfer of bus as well as the permit as valid in accordance with M.V. Act. The contention raised by the

learned Counsel for the petitioner is that when once a decision has been rendered by the authority under the M.V. Act, Section 94 of the Act

creates a bar of jurisdiction of civil Court. In this regard it is relevant to extract the said provision for better appreciation of the entire facts. Section

94 of CPC reads as under:

94. Bar of jurisdiction of Civil Courts.-

No Civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any

action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any civil

Court.

Therefore, a bare reading of Section 94 shows that the civil Court jurisdiction is taken away in so far as it relates to the dispute regarding the grant

of permit by the authorities under the Act. In the present case, the suit is filed for partition in respect of various items of properties, which includes

the bus also. Even though by applying Section 94 of the M.V. Act, the transfer of permit effected in the name of the revision petitioner, which has

become final by a decision taken in the appeal by the State Transport Appellate Tribunal, cannot be questioned, about which there is no dispute at

all, in this case, the Civil Court has to take a decision as to whether the properties mentioned in the schedules belong to ancestral or self-acquired,

which, can only be decided before the Sub-court after full-fledged trial and civil Court will have to decide about the partition, division etc. and

while deciding the same, it is always open to the Civil Court to take into account the transfer of bus effected by the second defendant in favour of

the petitioner herein and her legal right. The civil Courts power in deciding about the suit for partition cannot be said to be a bar u/s 94 of the M.V.

Act.

12. The reliance placed by the learned Counsel for the petitioner, viz., judgment of the Andhra Pradesh High Court in Labhala Samanthakamani

Vs. The Court of District Munsif and Others, relates to a case wherein, after the authorities under the M.V. Act have granted permit, the Civil

Court sought to grant injunction regarding the route permit and running the old bus. It was in those circumstances held that, the civil court has no

jurisdiction. While disposing of the said writ petition, B. Subhashan Reddy, J. (as he then was) has held as follows:

7. Ms. Vidyavathi, the learned Counsel for respondents 3 and 4 vehemently contends that the suit is maintainable as the permit is not questioned

and it is based only on family arrangement dated 15.4.1993 and as such suit is not a bar. But, as I have seen the contents of the plaint and also the

affidavit filed in support of temporary injunction petition, the whole endeavour of the respondents 3 and 4 was only to see that the benefit of the

temporary permit dated 29.12.1993, granted in favour of the writ petitioner is not availed of. May be, directly the permit is not questioned, but in

effect, the permit granted by the authority is vacated and ultimately it results in annulling the permit which has been granted by the competent

authority under the statute. When the statute expressly bars the jurisdiction of the Civil Court in questioning any permit or action taken by the

authorities under the Motor Vehicles Act, 1988, the Civil Court had no jurisdiction to entertain the same. As such, I hold that the entire

proceedings in O.S. No. 63 of 1993 on the file of the District Munsif, Ichhapuram abate, as they are not maintainable. It is needless to mention

that when the suit abates as being not maintainable, all Interlocutory Applications also stand dismissed and any orders passed in the said

Interlocutory Applications also disappear.

13. Likewise, the Rajasthan High Court in *Hazarilal v. Additional Sr. Sub-Judge, Hissar and Ors.* II (1994) ACC 262 has also held that Motor

Vehicles Act is a Code in itself and all matters like the transfer of permit, registration of permit, renewal, are all governed under the Motor Vehicles

Act, and therefore, the jurisdiction of Civil Court is barred. That was also a case, where the Civil Court has passed an ex-parte order restraining

the transfer of route permit, registration certificate, etc. and by applying Section 94 of the M.V. Act, the Rajasthan High Court has held that, the

Civil Court has no jurisdiction.

14. The un-reported judgment of Justice D. Raju (as he then was) in CRP. No. 1052 of 1982 dated 15.04.1994 relates to a revision arising from

the order of the State Transport Appellate Tribunal, wherein this Court has held that under Rule 199, after amendment taken together with Rule

199A would go to show that if at all it is only the transferor or at any rate a party to the joint application who can at the most be said to have any

say in the matter of transfer of permit and not a third party to the transfer application. That was a case when the third party attempted to object to

the transfer of permit. The learned Judge has held as follows:

9. ...In the light of the above, as the rules stood at the relevant point of time when the petitioner/objector objected to the transfer, he had no right or

locus standi whatsoever to make any objection to the transfer he being not a party to the joint application filed and consequently could not be said

to be a person aggrieved to file any appeal or the revision under the provisions of the Motor Vehicles Act, 1939....

All the said judgments relied upon by the learned Counsel for the petitioner relate to the issuance of transfer of permit in respect of vehicles, which

are the powers of the authority contemplated under M.V. Act and it is only the party to the joint application and third party has no right against

issuance of transfer of permit, I am of the considered view that those judgments have no application to the facts and circumstances of the present

cases.

15. In this regard it is relevant to extract the decision of the Regional Transport Appellate Authority while granting approval of transfer of permit

under the joint application between Mrs.Saraswathi and the petitioner and his partners. The Regional Transport Authority while effecting transfer

has made it very clear that the transfer is effected subject to the outcome of the other civil suits in respect of pending cases on claim of share of

over all ancestral properties. The portion of the order of the State Transport Appellate Tribunal dated 16.04.2003 states as follows:

...However, in respect of share of ancestral property still as available under the provisions of law, this decision of transfer of permit which is not an

ancestral property as per the available records will be subject to the outcome of the other civil disputes in respect of pending cases on claim of

share of overall ancestral properties.

Therefore, it is clear that even the authority contemplated under the M.V. Act has permitted transfer of permit subject to the decision of the suit

about which both the parties have informed the authority, which was in fact considered by the authority, and therefore, it cannot be said that the

decision of the Authority under the M.V. Act in respect of ownership of the vehicle as well as the permit including its transfer is final.

16. In this context it is relevant to refer the judgment of the Supreme Court referred to by the learned Counsel for the respondent in D.

Ramachandran Vs. R.V. Janakiraman and Others, . That was a case relating to the election dispute under the Representation of the People Act,

1950. While referring to Order VI Rule 16 and Order VII Rule 11 of CPC to strike out the pleadings and also to reject the pleadings, the

Supreme Court has held that the Court cannot dissect pleadings into several part and strike out a portion, which does not disclose cause of action.

The relevant portion of the judgment reads as under:

10. On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question

of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that

the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress

upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and

submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him.

The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a)

CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as

such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts

and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See

Baljit Singh and Another Vs. State of Jammu and Kashmir and Others, . We are satisfied that the election petition in this case could not have been

rejected in limine without a trial.

17. Therefore, looking at any angle, I do not see any irregularity or illegality in the order of the learned trial Judge in allowing the amendment

petitions. It is made clear that it is always open to the petitioner to raise his objection, which is open to him in law based on the transfer of permit as

well as the purchase of the bus from the second defendant at the time of trial. In view of the same, the revision petitions fail and the same are

dismissed. No costs. Consequently, connected miscellaneous petitions are closed.