

(2006) 11 AP CK 0060

Andhra Pradesh High Court

Case No: Second Appeal No. 1163 of 2004

Rayudu Apparao and Others

APPELLANT

Vs

Rayudu Chantibabu and Others

RESPONDENT

Date of Decision: Nov. 30, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 2(30), 48, 48(2), 50, 50(1)
- Sales of Goods Act, 1930 - Section 4

Citation: (2007) 4 ALT 533

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: J. Prabhakar, for the Appellant; N.P. Anjanadevi Satyanarayana, for the Respondent

Judgement

L. Narasimha Reddy, J.

Appellants are the defendants 1, 4, 6 and 7 in O.S. No. 228 of 1992, on the file of the II Additional Senior Civil Judge, Kakinada. The suit was filed by the 1st respondent, against the appellants and respondents 2 and 3, for the relief of declaration that he is the owner of tractor and trailer bearing Nos. AAP-3494 and AAP-6380, respectively, (for short "the tractor"), and of recovery of possession of the same, from the appellants. Since it is endorsed that the respondents 2 and 3 are not necessary parties, the 1st respondent shall be referred to as the respondent.

2. In his suit, the respondent pleaded that he entered into an agreement of sale (Ex.A-1), with the father of the 1st appellant, by name Rayudu Ganganna on 12.5.1989, for purchase of the tractor, for a consideration of Rs. 85,000/-, and on the same day, a sum of Rs. 30,000/- was paid. It was alleged that the vendor was permitted to retain the possession of the tractor, as a lessee, for a period of two years, and adjust a sum of Rs. 45,000/-, as charges for it, and that the possession of the tractor was to be delivered to the respondent, on expiry of two years, on

payment of balance of Rs. 10,000/-. He pleaded that on 28.5.1992, the balance of Rs. 10,000/- was paid, and delivery of possession of the tractor, as well as the Registration Certificate Book was handed over to him, under a document executed on the same day, marked as Ex.A-2.

3. Respondent contended that after delivering possession of the tractor, Ganganna died on 24.6.1992, while undergoing treatment, and in that view of the matter, the transfer of the registration could not take place immediately. The 1st appellant is said to have stealthily removed the tractor from the custody of the respondent on 17.7.1992, and though a police complaint was given on the same day, the 1st appellant managed them, and thereby, the possession could not be recovered. The respondent has also claimed the relief of damages, at the rate of Rs. 200/- per day, and a direction to the appellants, to sign the necessary papers for effecting transfer of the vehicle. The alternative prayer of refund of Rs. 85,000/- was also made.

4. On behalf of the appellants, a written statement was filed. It was pleaded that taking advantage of the strained relations between the 1st appellant and his father Ganganna, the respondent, who is an agnate, had brought into existence Exs.A-1 and A-2, with a view to take away the tractor. According to them, the 1st respondent took away the tractor when the family was in bereavement, on account of the death of Ganganna, and the possession thereof, was recovered by invoking the procedure under the law. It is also alleged that the respondent did not become the owner of the vehicle and Exs.A-1 and A-2 were fabricated. It was urged that at a time, when Ex.A-2 was said to have been executed, Ganganna was under treatment with DW-2.

The trial court decreed the suit, through judgment dated 27.4.1998. It was held that the respondent is the owner of the tractor, and the appellants were directed to deliver the possession of the same, within two months from the date of decree. The appellants were directed to pay a sum of Rs. 5,000/- towards mesne profits, and the respondent was permitted to file a separate application for ascertaining the future profits. A further direction was issued to the appellants, to execute necessary documents relating to transfer of the tractor, in the name of the respondent. The appellants filed A.S. No. 78 of 1998, in the Court of IV Additional District Judge, East Godavari, at Kakinada, challenging the decree and judgment passed by the trial court. The appeal was dismissed on 23.10.2003. Hence, this Second Appeal.

5. Sri J. Prabhakar, learned Counsel for the appellants, submits that though the provisions of the Sale of Goods Act apply to the sale of motor vehicles also, the respondent can be declared as owner, if only he is in possession of the vehicle, as provided for under Sub-section (30) of Section 2 of the Motor Vehicles Act, for short "the Act". Learned Counsel submits that Exs.A-1 and A-2 are fabricated, and even assuming that they are proved to be genuine, the occasion to grant a decree for possession of the vehicle, would have arisen, if only the respondent has otherwise become the owner of the said vehicle. He submits that if Exs.A-1 and A-2 were sufficient to confer ownership upon the respondent, the transfer of the vehicle must

have already taken place in favour of the respondent. Learned Counsel submits that there are several inconsistencies, in the facts pleaded and the relief claimed by the respondent.

6. Sri Satyanarayana, learned Counsel for the respondent, on the other hand, submits that by operation of Section 4 of the Sale of Goods Act, the respondent became the owner of the tractor, since he fulfilled all the conditions, contemplated under the agreement, Ex.A-1. Learned Counsel submits that the provisions of the Sale of Goods Act and the Motor Vehicles Act are to be read, inconsonance with each other, and if so done, it would emerge that the respondent became the owner of the vehicle. He submits that no substantial question of law arises for consideration, in the Second Appeal, and the concurrent findings of fact recorded by the courts below do not call for any interference.

The trial court framed the following issues, on the basis of the pleadings before it:

1) Whether the plaintiff is entitled to declaration that he is the owner of the tractor and trailer AAP-3494 and AAP-6380?

2) Whether the plaintiff is entitled to possession of the tractor and trailer bearing Nos. AAP-3494 and AAP-6380?

3) Whether the plaintiff is entitled to alternative relief of money decree? The relief of a direction to the appellants for taking necessary steps for transferring the vehicle was not reflected in the issues. All the same, the parties appear to have understood the controversy, between them and adduced evidence on that aspect also. On behalf of the respondent, PWs-1 to 4 were examined and Exs.A-1 to A-8 were marked. On behalf of the appellants, DWs-1 to 4 were examined and Exs.B-1 to B-16 were marked.

7. The trial court granted the relief of declaration of title, recovery of possession, directed the appellants to take necessary steps for transferring the vehicle, and awarded mesne profits for the same period, leaving it open to the respondent, to file an application for further profits. The appeal preferred by the appellants was dismissed.

8. Learned Counsel for the appellants and learned Counsel for the respondent have argued the matter at length. The Second Appeal was admitted by this Court, on 27.10.2004, by framing the following substantial questions of law:

1) Whether the plaintiff is entitled for declaration of ownership, in respect of tractor and trailer, in view of the specific provisions of Section 50 of Motor Vehicles Act, 1988?

2) Whether in view of the provisions of the Motor Vehicles Act, 1988, the transaction of lease of a motor vehicle which does not satisfy the statutory requirements can be enforced by a Civil Court?

Therefore, the matter needs to be examined with reference to the said questions.

9. The basis for the claim of the respondent over the vehicle is Exs.A-1 and A-2, said to have been executed by late Ganganna. The appellants took the plea that the said documents were fabricated, and alternatively, pleaded that they were vitiated by fraud and undue influence. In view of the fact that the courts below held that Exs.A-1 and A-2 were proved, it would not be appropriate for this Court, to undertake any discussion on that aspect in the Second Appeal. It has to be proceeded, as though Exs.A-1 and A-2 are proved.

10. Section 4 of the Sale of Goods Act, not only defines contract of sale, but also indicates the circumstances under which, such a contract can ripen into, sale itself. Delivery of possession of the goods happens to be one of the important steps, in the matter of a contract of sale, transforming into a sale. The very fact that the appellants prayed for the relief of recovery of possession of the tractor, discloses that they are not in possession of the same. Since the goods covered by Exs.A-1 and A-2 are motor vehicles, the procedure prescribed under the Act need to be taken into account, while examining the question whether the appellants can be declared as the owner of the vehicle.

11. In the very framing of the suit by the respondent and the relief granted by the trial court, an important inconsistency has crept in. If the respondent were to have been declared as the owner of the vehicle, there was no occasion or necessity, for the appellants, to have been directed to execute any documents, for that purpose. The declaration that the respondent, as the owner, cannot depend upon any acts or omissions, flowing from the appellants. As observed earlier, on the one hand, a declaration was sought to the effect that the respondent is the owner, and on the other hand, a prayer was made to the effect that the appellants must be compelled through an injunction, to sign necessary forms for transfer of the vehicle in favour of the respondent. In broad terms, it can be said that it resembled a suit, where the relief of declaration of title, on the one hand, and specific performance of agreement of sale, on the other hand, are prayed, at one and the same time.

12. The definition of "owner" under Sub-section (30) of Section 2 of the Act is wide enough, to take in its fold, not only the person registered as owner, but also the one, who has the possession of the vehicle, under the arrangement of hire purchase or an agreement. Admittedly, the respondent is not the registered owner. Even assuming that Exs.A-1 and A-2 can be treated as agreements, the fact remains that the respondent was not in possession of the vehicle, as on the date of filing of the suit. The act prescribes a detailed procedure, as to the manner in which the transfer of the ownership and registration can take place. Section 50 of the Act reads as follows:

Transfer of ownership:- (1) Where the ownership of any motor vehicle registered under this Chapter is transferred,-

(a) the transfer shall,-

(i) in the case of a vehicle registered within the same State within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in Sub-clause (i)-

(A) the no objection certificate obtained u/s 48; or

(B) in a case where no such certificate has been obtained,-

(I) the receipt obtained under sub-section(2) of Section 48; or

(II) the postal acknowledgment received by the transferee if he has sent an application in this behalf by registered post acknowledgement due to the registering authority referred to in Section 48, together with a declaration that he has not received any communication from such authority refusing to grant such certificate or requiring him to comply with any direction subject to which such certificate may be granted;

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, and shall forward the certificate of registration to the registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) Where-

(a) the person in whose name a motor vehicle stands registered dies; or

(b) a motor vehicle has been purchased or acquired at a public auction conducted by, or on behalf of, Government, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring the ownership of the vehicle in his name, to the registering authority in whose jurisdiction he has the residence or place of business where the vehicle is normally kept, as the case may be, in such manner, accompanied with such fee, and within such period as may be prescribed by the Central Government.

13. (Sub-sections 3 to 7 omitted as not necessary) Admittedly, the steps contemplated under Sub-section (1) of Section 50 of the Act were not taken by the respondent. Since the registered owner of the vehicle died, before any transfer of

registration takes place, the situation contemplated under Sub-section (2) thereof, arises. If the documents in possession of the respondent were sufficient to effect the transfer of ownership and registration in his name, he ought to have taken necessary steps get such transfer in his favour, and thereafter, to recover the possession of the vehicle. On the other hand, if the transfer in his favour depends upon any acts from the appellants, necessary direction ought to have been claimed against them, in which event, the relief of declaration of ownership becomes untenable. Another area of controversy is as to whether the respondent was entitled to be granted the damages, which he is yet to become the owner. The same contradiction, which is pointed above, would have its bearing on this also. A close perusal of the judgments of the courts below, reveals that the matter was not examined from the proper perspective. The relief granted in favour of the respondent needs to be modified, in such a way, that it accords with the provisions of the Act, and avoids incompatibility of the relief claimed by the respondent.

14. For the foregoing reasons, the Second Appeal is partly allowed, modifying the decree granted by the trial court, and upheld by the lower appellate court, to the following effect:

- a) The decree insofar as it declared the respondent as owner of the tractor and trailer bearing Nos. AAP-3494 and AAP-6380, respectively, is set aside.
- b) It shall be open to the respondent, to approach the Registering Authority under the Motor Vehicles Act, to get the registration of the said vehicles transferred in his favour, in accordance with law.
- c) As and when the transfer or registration takes place, in favour of the respondent, the appellants shall be under obligation to deliver the possession of the same, to the respondent.
- d) Since the respondent is yet to become the owner, the decree for mesne profits is set aside.

There shall be no order as to costs.