

HIGH COURT OF SINDH KARACHI

IInd Appeal No.21 of 2021

[Mst. Syeda Azeba Matin versus Agha Badar & Ors.]

Appellant : Through Raja Ali Asghar advocate
Respondent No.1 : Through Mr. Abu Baqar Khalil advocate
Respondents No.2to6: None present
Respondent No.7 : Through Mr. Kamran Khan Assistant A.G
Date of hearing : 16.11.2023
Date of decision : 03.04.2024

J U D G M E N T

KAUSAR SULTANA HUSSAIN J.- This appeal has been filed against the concurrent findings of two Courts below. The respondent No.1/plaintiff had instituted Civil Suit No. 574 of 2013 [*Re: Agha Bader versus Ahmed Sultan A. Zaidi & Ors.*] for declaration, cancellation of instruments, recovery of possession, damages, mesne profit with mandatory and permanent injunction in respect of Daihatsu Cuore bearing Registration No.AJZ-090, Engine No.R-030077, Chasis No.L-5013-7529877 Model 2005 (**Subject Vehicle**) before the Court of Ist Senior Civil Judge Karachi East [**Trial Court**] which was partly decreed [i.e the suit was decreed to the extent of prayer clauses a to d & g while it was dismissed to the extent of prayer clauses e, f. h & I] vide Judgment and Decree both dated 09.11.2019. For better understanding the prayer clauses of Civil Suit No.574 of 2013 are reproduced below:

- a. *To declare that the plaintiff is the lawful owner of the said car mentioned in para No.4 of the plaint and the defendant No.1 to 4 and any other subsequent purchaser of said car unlawfully taking the possession of the said car.*
- b. *To declare that the said car has been unlawfully / falsely transferred in the name of defendant No.2 to 4 or any other subsequent purchaser, administering fraud and after execution of false and manipulated documents putting forged signature of the plaintiff, the same are NULL & VOID.*
- c. *To direct the defendant No.5 to cancel all documents of entitlement regarding the said car in the name of defendant No.1 to 4 or any document made in favour of any person other than the plaintiff.*
- d. *To direct the defendants No.1 to 4 and any other subsequent purchaser of said car to hand over physical possession of the said car to the plaintiff.*

- e. *To direct the defendants No.1 to 4 and any other subsequent purchaser of said car to pay at least Rs.30,000/- rupees per month with increase of 20% per year in shape of mesne profit to the plaintiff from January 2011 till handing over the possession of the said car.*
- f. *To award damages to the plaintiff of Rs.10,00,000/- for mental torture failure of health and losses of business.*
- g. *To permanently restrain the defendants to not to create third party interest upon the said car.*
- h. *Cost of the suit may also be granted.*
- i. *Any other or further relief (s), which this Hon'ble Court deems fit may kindly be granted under the circumstances of the case.*

2. The Judgment and Decree passed by trial Court were challenged by the present appellant/defendant No.4 before in Civil Appeal No.328 of 2019 [*Re: Mst. Syeda Azeba Matin versus Agha Badar & Ors.*] so also by the respondent No.1/plaintiff in Civil Appeal No.329 of 2019 [*Re: Agha Badar versus Ahmed Sultan A. Zaidi & Ors.*] before IInd Additional District Judge Karachi East [**Appellate Court**]. The learned Appellate Court vide separate Judgments and Decrees dated 02.11.2020 dismissed the appeal bearing No.328 of 2019, which was preferred by present appellant/defendant No.4, while in appeal No.329 of 2019, which was filed by respondent No.1/plaintiff, modified the judgment and decree passed by the learned trial Court, thereby also decreed the suit to the extent of prayer clause e and g.

3. The respondent No.1/plaintiff and/or any other respondent(s) did not file any appeal against the judgments and decrees passed by the appellate Court, whereas the appellant/defendant No.4 challenged both the judgments and decrees passed by appellate Court in Civil Appeals No.328 and 329 of 2019 through captioned appeal. For the sake of reference the Judgments and Decrees passed by learned trial Court as well as appellate Court respectively are hereinafter referred to as impugned Judgments and Decrees.

4. The brief history of the case, as disclosed in the plaint of the suit, is that respondent No.1/plaintiff claimed that he is property dealer while respondent No.2/defendant No.1 Ahmed Sultan A. Zaidi was his employee to look after his business; that he purchased the subject vehicle on lease through Muslim Commercial Bank and handed over the same to his aforesaid employee for effecting working of business, as the said employee had to frequently go outside the Karachi for business purposes; that he (plaintiff) cleared all the installments of Bank in respect of subject vehicle in the year 2011 and such clearance letter was also issued by the Bank in his favour; that respondent No.2 left the job in the year 2011 but did not hand over the possession of subject vehicle to him (plaintiff) for some time and thereafter it was transpired to him (plaintiff) that respondent No.2 had sold out the subject vehicle to third party by manipulation of documents.

Nonetheless respondent No.1/plaintiff filed the aforesaid suit which, as mentioned above was partly decreed in his favour viz: he was declared owner of subject vehicle and sale as well as subsequent sale of subject vehicle to various persons/defendants by defendant No.1 was declared illegal and directions were issued to handover the possession of subject vehicle to plaintiff, however the said suit to the extent of mesne profit for intervening period and damages was dismissed. Both the parties i.e respondent No.1/plaintiff and appellant/defendant (*subsequent purchaser*) preferred above referred appeals before the appellate Court, whereby the appeal filed by present appellant/defendant No.4 was dismissed, however, in appeal filed by respondent No.1/plaintiff the suit was also decreed to the extent of prayer clause (e) i.e respondent No.1/plaintiff was also declared entitled for mesne profit for intervening period @ Rs.30,000/- per month with 20% increase per year.

5. The bone of contentions of arguments advanced by learned counsel for the appellant/defendant No.4 is that appellant/defendant No.4, being one of the subsequent bonafide purchaser of subject vehicle after due verification from the concerned quarters, is not liable to suffer for fraud and/or manipulation, if any, committed by the ex-employee of respondent No.1/plaintiff, therefore, the impugned judgments and decrees being bad in the eyes of law are liable to be set aside.

6. Contrary learned counsel for the respondent No.1/plaintiff states that ex-employee of respondent No.1/plaintiff i.e respondent No.2 Ahmed Sultan A. Zaidi was not the owner of subject vehicle as such he had no authority to sale out the same, therefore, the sale as well as subsequent sale of subject vehicle was/is illegal. He while supporting the impugned judgments and decrees prayed for dismissal of the appeal.

7. Whereas despite service of notice no one effected appearance on behalf of respondents No.2 to 6. Perusal of record shows that respondents No.2 and 4 were also declare ex-parte before the Courts below while the official respondents No.5 and 6 are formal party. Even otherwise none of the respondents No.2 to 6 had preferred any appeal against the judgment and decree penned down by trial Court either before 1st appellate Court or before this Court, which prima facie establish that they have lost their interest in the subject proceedings.

8. I have heard the learned counsel for the parties and have perused the material available on record.

9. Admittedly the subject vehicle was leased out to respondent No.1/plaintiff by Muslim Commercial Bank and he cleared all the installments and as such clearance letter was also issued on his name by the concerned Bank (*as admitted by the Bank in written statement*) whereas the respondent No.2/defendant No.1

being ex-employee of respondent No.1/plaintiff was only in possession of the subject vehicle, as such he was not authorized under the law to sale out the subject vehicle to any person by manipulation of documents, therefore, the sale as well as subsequent sale of subject vehicle, without authority/power and on the basis of manipulation of documents, cannot be said as legal. The appellant/defendant No.4, being purchaser/subsequent purchaser, was first required to check veracity and genuineness of the documents as well as authority of seller in respect of subject vehicle.

10. In view of the above, the trial Court had rightly decreed the subject suit to the extent of prayer clauses (a) to (d) & (g) thereby declaring the respondent No.1/plaintiff as owner of subject vehicle by cancelling the documents in respect of initial sale and subsequent sale, permanently restraining the defendants from creating third party interest in respect of subject vehicle and issuing directions for handing over possession of subject vehicle to respondent No.1/plaintiff and rightly dismissed the suit to the extent of remaining prayer clauses i.e prayer clause (e), (f), (h) & (i), as the prayer clause (e) relates to mesne profit during intervening period of sale and subsequent sale of subject vehicle, whereas the prayer clause (f) relates to damages, while the prayer clauses (h) and (i) were/are formal prayers being pertaining to award of cost of the suit and any other relief(s).

11. However, the appellate Court though dismissed the appeal bearing No.328 of 2019 preferred by appellant/defendant No.4 against above partial decree, yet also decreed the suit in appeal bearing No.329 of 2019 filed by respondent No.1/plaintiff to the extent of prayer clause (e) & (g) though trial Court, as mentioned above, besides decreeing the suit to the extent of prayer clause (a) to (d) also decreed the suit to the extent of prayer clause (g), therefore, re-decreeing the suit to the extent of prayer clause (g) is prima facie a bonafide typing error and the same is ignored accordingly.

12. As far as decreeing the suit to the extent of prayer clause (e) is concerned, the said prayer relates to mesne profit of Rs.30,000/- per month with 20% increase per year during intervening period of sale and subsequent sale of subject vehicle. Admittedly the subject vehicle remained in possession of various persons on the basis of initial sale and subsequent sale, but the respondent No.1/plaintiff has failed to bring on record any evidence that how many period the subject vehicle remained in possession of an individual/specific person, therefore, in absence of such evidence the mesne profit for the intervening period cannot be granted, which too when in Civil Appeal No.328 of 2019 (*filed by present appellant*) the appellate Court maintained the findings of trial Court, therefore, on same time the said findings cannot be modified/alterd in Civil Appeal No.329 of 2019 (*filed by respondent No.1/plaintiff*) by the same appellate Court through separate judgments and decrees of even date.

13. In view of the above discussion, captioned appeal is partly allowed and partly dismissed, in the manner that the impugned judgment and decree dated 02.11.2020 passed by appellate Court in Civil Appeal No.328 of 2019, requiring no interference by this Court, is *maintained*, however, the impugned judgment and decree of even date passed by appellate Court in Civil Appeal No.329 of 2019 is *set aside* but only to the extent of allowing the prayer clause (e) of the suit. Consequently the impugned judgment and decree passed by the trial Court in Civil Suit No. 574 of 2013 [*Re: Agha Bader versus Ahmed Sultan A. Zaidi & Ors.*] are maintained.

14. Captioned appeal stands disposed of in the above terms.

JUDGE

Faheem/PA