

**RODRIGO
v.
BALASURIYA AND OTHERS**

COURT OF APPEAL
DISSANAYAKE, J. AND
SOMAWANSA, J.
CA NO. 772/91 (F)
DC PANADURA NO. 2347/Spl
OCTOBER 12 AND 29, 2001 AND
DECEMBER 10, 2001

Civil Procedure Code, sections 712 and 736 – Car not in inventory of deceased – Motor Car Ordinance, No. 20 of 1927, sections 2, 19 (1), 19 (3), 19 (9) and 26 – Registered owner only deemed to be the owner – Other relevant evidence could be considered – Judicial settlement – Special proceedings – Administrator dealt with accounting party.

When R.R. died and her property was administered the car was not itemised in the inventory relating to her property, though it was registered in the name of R.R. However, when L.R. died, in the testamentary case filed in respect of his estate the car was included in the inventory of property.

The plaintiff-appellant, the Administrator of the estate of L.R. instituted action claiming the car. The defendant-respondent's position was that the said vehicle belonged to R.R. – and this was accepted by Court.

On appeal –

Held:

- (1) Registration is not conclusive proof of ownership.
- (2) Other evidence that is relevant has to be considered.

Per Dissanayake, J.

“A person whose name is registered as owner of a motor vehicle is deemed to be the owner, only for the purposes of the Registration, that is render him liable to all those duties which the law cast upon the owner of such a motor vehicle.”

- (3) In terms of section 736 of the Civil Procedure Code a contest that arises between the accounting party and any other party in respect of property alleged to belong to the estate, to which the accounting party lays claim, that contest must be tried in the same special proceeding, ie the proceeding for judicial settlement.

APPEAL from the judgment of the District Court of Panadura.

Cases referred to :

1. *Suppamal v. Govinda Chetty* – 44 NLR 193 at 197.
2. *Samarasinghe v. Wijedasa* – 8 CWR 3 at 4.

Rajan Gunaratne for plaintiff-appellant.

Upali Almeida for 1st, 2A, 4th and 5th defendant-respondents.

Cur. adv. vult.

February 22, 2002

DISSANAYAKE, J.

The plaintiff-appellant instituted this action claiming that the Rolls Royce car bearing registration No. B 701 belonging to her late husband Lal Rodrigo, and that she being the administratrix of the estate of Lal Rodrigo bearing Panadura DC case No. 1450/ testamentary and for the purpose of proceeding with the said action it was necessary to take possession of the said vehicle which is presently kept at No. 310, Galle Road, Panadura.

The defendants-respondents filed answer denying the various averments in the plaint and averred that the said vehicle belonged to Roslyn Rodrigo who was the mother of Lal Rodrigo and the 1st to 5th defendants-respondents, and prayed that the plaintiff-appellant's action be dismissed.

The case proceeded to trial on 4 issues and at the conclusion of the trial the learned District Judge by his judgment dated 11. 10. 1991, dismissed the action of the plaintiff-appellant.

It is from the aforesaid judgment that this appeal has been preferred.

Learned counsel appearing for the plaintiff-appellant contended that the learned District Judge erred in dismissing the plaintiff-appellant's action. He contended further that the learned trial Judge erred on the following matters:

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- (a) He failed to embark on a proper analysis of the evidence led in the case;
- (b) He failed to consider the legal effect of the three (3) inventories filed in the testamentary case of Mrs. Roslyn Rodrigo, Lal Rodrigo and Chitral Rodrigo;
- (c) He failed to consider the effect of possession of the Rolls Royce by Lal Rodrigo;
- (d) He failed to consider the legal implications of ordering amendment of the inventory of Mrs. Roslyn Rodrigo who died as far back as 1963.

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The dispute in this case revolves round the Rolls Royce car bearing No. B 701/B, registered in the name of Mrs. Roslyn Rodrigo, in the register of motor vehicles in 1947. The extract from the register was produced marked 1D4.

The plaintiff-appellant presented her case to the Court below on the basis that after her marriage to Lal Rodrigo in 1952, the Rolls

Royce car was bought by her husband from his aunt Mrs. Adlene Munasinghe for a sum of Rs. 1,750. However, since Lal Rodrigo already was owner of another vehicle bearing No. X 7089 and because of the petrol rationing system that was in existence during the time 40 of the 2nd world war the Rolls Royce was registered in his mother Roslyn's name. However, it was parked at No. 17, Dias Lane, Panadura, where they lived after marriage till 1964.

Lal Rodrigo used the Rolls Royce car till 1964 and entered the car and drove the car himself at numerous Vintage car rallies that were held. From about 1961 or 1962 the set of tyres was worn out and he was not able to purchase a set of tyres locally for the car and since then the car was not used.

In 1964 Lal Rodrigo and the plaintiff-appellant moved to No. 316 Galle Road, Panadura. As that house did not have a garage the Rolls 50 Royce was pushed to Lal's mother's house at No. 310, Galle Road, Panadura, and was kept there. Lal Rodrigo had possession of the keys of the Rolls Royce.

In 1998 Roslyn Rodrigo died and her property was administered in the District Court of Panadura, in case No. 907/Testamentary and in the inventory relating to her property which was filed marked and produced P8 the car was not included, as it belonged to Lal Rodrigo.

Thereafter, Lal Rodrigo died on 20. 05. 1978 and in the testamentary case that was filed in respect of his estate bearing No. 1450/ Testamentary the Rolls Royce was included in the inventory of properties 60 in the said case which was marked and produced as P9.

The position of the defendants-respondents was that whenever Roslyn Rodrigo purchased any property it was purchased in the name

of Lal and therefore whatever that was purchased in his name was purchased in trust for the mother. However, this was not established. When Roslyn Rodrigo had 2 sons, Lal and Chitral along with 4 sisters it is difficult to understand as to why she would have purchased articles only in Lal's name. However, the so called trust was not put in issue. Thereby, the defendants-respondents have conceded that legal title to the vehicle was with Lal Rodrigo. 70

It is relevant to observe that the defendants-respondents were not in a position to dispute Lal Rodrigo's legal title to the vehicle and the fact that they never disputed his possession of the car during his lifetime and the fact that they waited till he died to claim legal title to the vehicle, are factors which indicate that their claim to the vehicle was an afterthought.

Parakrama Paranawithana a son-in-law of Roslyn Rodrigo stated in evidence that he married in 1954. From the time of his marriage the car was in his mother-in-law's garage. He further stated that the car was in a running condition only for about 3 years since his marriage. 80

Document P7 which was awarded to Lal for participating with the Rolls Royce at the Vintage car rally held on 5th September, 1959, belies his evidence.

Paranawithana who was a joint administrator of Roslyn Rodrigo's testamentary case in his evidence stated that he did not take steps to have the Rolls Royce included in the inventory. The reason given by him for that is that it had no value.

However, it is interesting to note that on a perusal of the said inventory (P8) the following items too had been included. The furniture 90

of the house valued at Rs. 500, compensation of Rs. 30 payable by the Urban Council and Rs. 129/78 as medical expenses. Therefore, Paranawithane's explanation that the Rolls Royce was not included in the inventory as it had no value cannot be accepted.

Despite the joint affidavit setting out the inventory marked P8 filed in Roslyn's testamentary case which is a joint affidavit affirmed to by Paranawithana, Lal Rodrigo and his sister Maheswary Paranawithana affirming to the effect that Roslyn's estate consisted only of the items mentioned in the inventory to the best of their knowledge. Paranawithana in his testimony before the Court below admitted that he affirmed to ¹⁰⁰ a false affidavit.

Despite the widow of Chitral Rodrigo, the 3rd defendant-respondent stating in her evidence that she was aware that her husband was entitled to shares in this vehicle from 1978, she admitted that her husband died in 1982 after leaving a Last Will. However, she made no mention of the Rolls Royce car being included in the said Last Will. Further, the 3rd defendant-respondent did not include the Rolls Royce as belonging to her late husband's estate, in the testamentary case relating to her husband.

Further, the 3rd defendant-respondent gave evidence of letter ¹¹⁰ marked 1D2 dated 04. 02. 1976 whereby Lal requested his brother to sign the transfer papers as the car was in the mother's name. In reply to letter 1D2 the 3rd defendant-respondent's husband Chitral sent letter dated 4th February, 1976 (1D3) her husband Chitral did not contest Lai's right to have the Rolls Royce transferred in his name. However, in that letter he stated that the transfer can be effected after the mother's estate is finally divided among the heirs. Chitral who was one of the respondents in their mother's testamentary case, should have known that the Rolls Royce was not included in the mother's

inventory of assets dated 10th September, 1972 and therefore he knew ¹²⁰ that when the mother's estate is finally divided among the heirs, Roslyn's heirs would have no claim to the Rolls Royce. However, no steps have been taken by the heirs of Roslyn Rodrigo to have the inventory amended. Chitral did not make any reference to the Rolls Royce in his Last Will.

The question whether property not included in the inventory of the deceased and claimed by and included in the inventory of another can be claimed by the heirs of the deceased has to be answered in the negative.

In terms of section 712 of the Civil Procedure Code any person ¹³⁰ interested in the estate is entitled to move in the testamentary case itself stating that the administrators have failed to file an inventory or a sufficient inventory. If the Court is satisfied that the administrator is in default, the Court shall order the delinquent to file an inventory or a further inventory. The administrator will be liable to be dealt with for contempt proceedings.

In terms of section 736 of the Civil Procedure Code, a contest that arises between the accounting party and any other party in respect of property alleged to belong to the estate, to which the accounting party lays claim, that contest must be tried in the same special ¹⁴⁰ proceeding, ie to say, the proceeding for judicial settlement. (per Soertsz, J. in *Suppumal v. Govinda Chetty*⁽¹⁾ at 195).

The defendants-respondents case was based solely on the fact that the Rolls Royce was registered in the name of Roslyn Rodrigo in the register of motor vehicles in 1947. They claimed as heirs of Roslyn Rodrigo.

In the case of *Samarasinghe v. Wijedasa*⁽²⁾ at 4, Schneider, AJ. stated: "A person whose name is registered as owner of a motor vehicle is deemed to be the owner, of that vehicle only for the purposes of that registration, that is, to render him liable to all those duties, which the law cast upon the owner of a motor vehicle. That registration is by no means conclusive as to the real ownership of the motor vehicle".¹⁵⁰

Since it has been held that registration is not conclusive proof of ownership it is necessary to consider the effect of registration.

To determine the effect of registration it is necessary to examine clause 2 of the Motor Car Ordinance, Ordinance No. 20 of 1927 as amended, which governed the registration of vehicles in 1947. Section 2 reads as follows: "Unless otherwise provided this Ordinance applies to a motor car only when on a highway".¹⁶⁰

Section 26 enacted that, for the purposes of any proceedings under this Ordinance, the registered owner of a motor car shall be deemed to be the owner provided that it shall be a good defence for the registered owner to prove that the motor car was at the time of any alleged offence in the possession of the absolute owner under section 19 (3) where the Court after hearing the absolute owners shall consider him as the owner.

Section 19 (1) enacted that no person shall possess or use a motor car unless the person for the time being entitled to the possession thereof is duly registered as the owner.¹⁷⁰

Section 19 (3) (a) states that that where the person entitled to the possession of a motor car is not the absolute owner, he may apply to the registrar to enter his name as the absolute owner.

It is clear from these provisions of the Motor Car Ordinance, that the registration of Roslyn Rodrigo as the owner has no bearing on the question of ownership that has to be determined in this case and does not even constitute *prima facie* evidence of ownership.

On the contrary despite the fact of the learned District Judge not allowing in evidence the receipts issued by Mrs. Adlene Munasinghe for payment by instalments on 25. 05. 43, 05. 06. 43 and 21. 02. 43, made by the plaintiff-appellant which were marked P2, P3 and P4, subject to proof, for want of proof of the said documents, the plaintiff-appellant established the fact that Lal Rodrigo purchased the Rolls Royce from his aunt Mrs. Adlene Munasinghe by the following evidence:

- (a) By letter P5, that Lal Rodrigo negotiated with Mrs. Adlene Munasinghe to purchase the Rolls Royce on differed payments and he was requested to take possession of the vehicle by Mrs. Adlene Munasinghe.
- (b) That Lal Rodrigo was the registered owner of Austin Car bearing No. X 7089 and due to the petrol rationing scheme that was there during the period of the 2nd world war he did not get the Rolls Royce registered in his name.
- (c) Lal Rodrigo bought the vehicle in 1943. The 3rd defendant-respondent in her evidence conceded that there was a petrol rationing scheme during the period of war which ended in 1944.
- (d) That at No. 310, Galle Road, the house where his mother lived had a garage and house No. 316, Galle Road, where he shifted to did not have a garage; that was the reason why the Rolls Royce was left in the garage of the mother's house.

- (e) Non-inclusion of the said vehicle in his mother's (Roslyn Rodrigo's) Inventory of Assets in her testamentary case bearing No. 907/T despite his sister Maheswary, 2nd defendant-respondent and brother in-law Paranawithane, the 5th defendant-respondent being joint administrators.
- (f) Inclusion of the said car in the inventory of assets of Lal Rodrigo's testamentary action bearing No. 450/T.
- (g) Non-inclusion of the said vehicle or a share of it in the testamentary case of Chitral, the late husband of the 3rd ²¹⁰ defendant-respondent.

It is of relevance to observe that the learned District Judge did not embark on a proper analysis of the evidence in the case. The learned District Judge apparently based his decision solely on the fact of the registration of the name of Roslyn Rodrigo as the owner. He did not consider the other evidence that was relevant to be considered and thereby he erred. Therefore, the said judgment cannot be allowed to stand.

I set aside the judgment of the learned District Judge dated 11. 10. 1991 and direct the learned District Judge to enter judgment ²²⁰ for the plaintiff-appellant as prayed for with costs.

The appeal is allowed with costs.

A. M. SOMAWANSA, J. – I agree.

Appeal allowed.