

John Tinson & Co. Pvt. Ltd. and Others

Vs

Surjeet Malhan (Mrs) and Another

Civil Appeals Nos. 737-38 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

03.02.1997

ORDER

1. Leave granted. We have heard the learned counsel on both sides.
2. These appeals by special leave arise from the judgment of the Division Bench of the High Court of Himachal Pradesh, made on 14-11-1996 in RFAs Nos. 230 and 231 of 1985.
3. The admitted position is that the respondents, Mrs. Surjeet Malhan and Mr. B. K. Malhan, wife and husband respectively, laid two suits for declaration and permanent and mandatory injunction. The learned Single Judge of the High Court dismissed the suits. But on appeal, the Division Bench has decreed the suits. Thus, these appeals by special leave.
4. The first respondent, Mrs. Surjeet Malhan, held 1500 shares in total 900 in her name and 600 in the name of other relatives - and 10 preferential shares. The second respondent, B. K. Malhan, had held 2230 ordinary shares and 64 preferential shares. It would appear that there was an agreement between B. K. Malhan and Shri R. D. Bhagat, the appellant, for transfer of the shares and completion of the transaction to put on rails the company which was running in losses. It would appear that as per the agreement, subsequent transactions were to be completed and in furtherance thereof, it appears that the shares, admittedly, were entrusted to Mr. Bhagat with a blank transfer form. Thereafter, the disputes arose between them. In consequence, the suits came to be laid by the respondents against the appellants.
5. The principal contention raised by Shri P. N. Lekhi, learned Senior Counsel for the appellants, is that Mrs. Malhan had admitted in her evidence that her husband had delivered her shares to Bhagat and that she never objected to the transfer and that, therefore there was an implied consent for the transfer of her shares in favour of Bhagat. Equally, it is contended that when B. K. Malhan had transferred the shares, though they were not registered with the previous consent of the Board of Directors and they were not duly registered in the register maintained by the Registrar in that behalf, there was a complete transaction; the Division Bench, therefore, is not right in reversing the judgment of the Single Judge. We find no force in the contentions.
6. There should be consensus ad idem for a concluded contract and it is seen that Section 25(1) of the Contract Act contemplates that when a transfer is without consideration, it is a void contract. It is an admitted position that there is no concluded contract between Smt. Surjeet and Bhagat. The acquiescence did not amount to consent unless Smt. Surjeet Malhan expressly authorised her husband to transfer her shares. The transfer as contemplated in this case is only for a sum of Re 1. As a consequence, in the eye of law, there is no consideration and, therefore, the transfer agreement

is void. The question then is whether the wife had consented to the transfer. It is an admitted position that she had not given authority by any letter in writing or otherwise to her husband to transfer her shares in favour of Mr. Bhagat. Shri Lekhi sought to rely upon a judgment of this Court in Vasudev Rammchandra Shelat v. Pranalal Jayanand Thakar ((1974) 2 SCC 323) in which the Privy Council judgment rendered in Maneckji Pestonji Bharucha v. Wadilal Sarabhai Co. (LR (1925-26) 53 IA 92 : AIR 1926 PC 38) was approved of. He contended that once the shares with blank transfer forms were entrusted, the contract is complete and, therefore, there is a concluded contract between Bhagat and the respondents. We find no force in the contention. The transaction was between the broker and the purchaser. After the broker purchased the shares on behalf of the company with blank transfer forms, the shares were entrusted. It was, therefore, concluded that the moment the shares were entrusted, being moveable property, the contract was complete and, therefore, it was a valid transfer. In this case, there was no direct transaction between Mrs. Surjeet Malhan and Mr. Bhagat. It is not even the case of the appellant that Mr. Malhan had been authorised to entrust those shares and blank transfer forms to Bhagat. Under these circumstances, without any specific authority by the owner of the shares, i.e., Mrs. Surjeet Malhan in favour of third party, including her husband, he gets no right to transfer her shares; nor Bhagat gets any right and title in the shares held by Mrs. Malhan. Even the judgment cited by Shri Lekhi in Balkrishan Gupta v. Swadeshi Polytext Ltd. ((1985) 2 SCC 167 : 1985 SCC (Tax) 215) does not help the appellants. In that case, the question was whether the appellant was a shareholder. This Court relying upon the concept of "ownership of right" discussed in Dais on Jurisprudence held that "an owner may be divested of his claims etc. arising from the right owned to such an extent that he may be left with no immediate practical benefit. He remains the owner of it nonetheless because his interest will outlast that of other persons in the thing owned. The owner possesses that right which ultimately enables him to enjoy all rights in the thing owned by attracting towards himself those rights in the thing owned which for the time being belong to others, by getting rid of the corresponding burdens". In that case, similar to transfer of shares without being registered in the company, it was held that he was the holder of the shares. The ratio therein also has no application to the facts in this case. Accordingly, we hold that the transfer of shares held by Mrs. Malhan in favour of the appellant is invalid in law.

7. The next question is whether the transfer of the shares held by Mr. B. K. Malhan is valid in law. In that behalf clause (8) of the Articles of Association is relevant. It is now a well-settled legal position that Articles of Association of a private company is a contract between the parties. Clause (8) reads that : "No transfer of any share in the capital of the company shall be made or registered without the previous sanction of the Directors ...." It is an admitted position that no previous sanction has been obtained from the Directors for transfer of the shares held by Mr. Malhan. Shri Lekhi contends that Mr. Malhan being the only Director, since his father had already resigned and he had entrusted the shares to the appellant, Bhagat, there is a transfer in the eye of law. We are unable to agree with the learned counsel. The concept of previous sanction of the Directors connotes that there should be a written resolution accepting the transfer from Mr. Malhan in favour of Bhagat and such previous sanction should be preceded by handing over of the shares. In this case, such an action was not done and, therefore, even the transfer of the shares held by Mr. Malhan in favour of the appellant is not valid in law. The Division Bench of the High Court, therefore, was right in granting the decree as prayed for.

8. The appeals are accordingly dismissed, but in the circumstances, without costs.