
(2006) 10 KL CK 0070
In the High Court Of Kerala
Case No : MFA No. 982 of 2000

Damien Subsidies and Kuries Ltd.

APPELLANT

Vs

Jose Pulicken

RESPONDENT

Date of Decision : 27-10-2006

Acts Referred:

Companies Act, 1956 — Section 111, 153, 157

Citation : (2007) 137 CompCas 288 : (2007) 2 CompLJ 479 : (2007) 77 SCL 178

Hon'ble Judges : K.S. Radhakrishnan, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : C.M. Devan, Antony Dominic and Priya Mahesh, for the Appellant;
K.P. Dandapani, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—This appeal has been preferred by a public limited company aggrieved by the order of the Company Law Board¹ directing the company to transfer the share in favour of the respondent-petitioner and to issue duplicate certificate after registering the transfer.

2. The respondent herein filed a petition u/s 111 of the Companies Act, 1956, seeking a direction to the company to enter his name in the register of members. The petitioner stated that he has purchased one share held in the name of one Chacko Pulikken from his legal heirs on November 10, 1997, and sent the instrument of transfer along with the share certificate together with the deed of sale dated November 10, 1997, to the company for registration of transfer since the same was the subject-matter of a trust authored by late Pulikken Ouseph Chacko. Company refused to register the transfer in the name of the petitioner.

3. Sri C.M. Devan, senior counsel appearing for the company submitted that the Company Law Board has committed an error in giving a direction to the company to transfer the share in favour of the respondent. Counsel submitted that for nearly half a century the dividend accruing on the share had been enjoyed by the

beneficiary Damien Institute. Counsel also placed reliance on the decision of the Madras High Court in *S. Parameswari Vs. Kamadhenu Metal Rolling Mills Pvt. Ltd.*, Tirupur, and submitted that the object of Section 157 is that a person dealing with the company may not be affected by the entry of any kind of trust in the register of members, but the company can take notice of or recognise any trust brought to its notice otherwise than by entry in the register.

4. The respondent took the stand that late Pulikken had through a will bequeathed the impugned share to his sons, Jose Pulikken and George Pulikken and the legal heirs of the deceased had desired to transfer the said share to Jose Pulikken, one of the sons of Chacko. Further, it is also pointed out that as per the trust deed, one of the sons of the deceased Pulikken was to be the trustee in the event of death of the latter. Under such circumstances, he had submitted an application for registration of transfer of share in his name. The respondent stated that the Company Law Board has rightly directed transfer of the share in his favour. Section 153 of the Companies Act states that no notice of any trust, express, implied or constructive shall be entered on the register of members or of debenture holders. The object of section is : (1) to relieve the company from any obligation to take notice of equitable interests in its shares, that is to say, to take notice of rights of third parties in respect of the shares registered in the names of any members ; and (2) to preclude any person claiming an equitable interest in shares from treating the company as a trustee in respect thereof. Further, the beneficiary who is not entered as a shareholder of shares has no connection with or rights in the company in which any shares are held in trust for him. Lord Coleridge, C.J., in *Perkins, In re* [1889] 24 QBD 613 (CA), stated as follows (page 616):

It seems to me extremely important not to throw any doubt on the principle that companies have nothing whatever to do with the relations between trustees and their cestuis que trust in respect of the shares of the company. If a trustee is on the company's register as a holder of shares, the relations which he may have with some other person in respect of the shares are matters with which the company has nothing whatever to do ; they can look only to the man whose name is on the register.

Lord Esher M. R., in the same has put it as follows (page 618):

the law has given the company the right to say, "We do not care whether you are a cestui que trust or not; if you are, we have a right to take no notice of you".

6. Reference may also be made to the decision in *Fender v. Lushington* [1877] 6 Ch D 70. We may however inclined to follow the dictum laid down by the Madras High Court in *S. Parameswari's case* AIR 1971 Mad 293, wherein the court has taken the view that the object of Section 153 is that a person dealing with the company may not be affected by the entry of any kind of trust in the register of members, but the company can take notice of or recognise any trust brought to its notice otherwise than by entry in the register. Facts would indicate that the

prime share in the company as per share certificate No. 67 was held by Pulikken Ouseph Chacko and he declared and constituted the share in the company as a trust for the benefit of Damien Institute, Mulayam, Trichur district and the trust property to be managed by him as trustee so long as he was living and afterwards by his nominee and in the absence of any successor appointed by him as trustee by his eldest son Jose and the trust document was filed with the company in 1957, itself and the company had been paying dividends to the beneficiary.

7. The Damien Institute is one established for treating the poor leprosy patients. The institute is run by receiving donations and other benefits from various institutions and persons. It is also receiving dividends and all other benefits in respect of the abovesaid share from Damien Subsidies and Kuries Ltd., the appellant-company. It is also the beneficiary of the share which belongs to the trust since 1957 and no other person has valid right to transfer the abovementioned share. We have perused the trust deed dated July 22, 1957. The trust is to continue for its beneficiary even after the death of the author. The intention of the author of the trust is very clear that members should continue and the beneficiary should continue to get the benefit from share certificate No. 67. Author of the trust has also made a provision for the elder son to manage the trust. If the intention of the author of the trust was to terminate the trust, there would not have been any such provision for the elder son to manage the trust as a trustee even after the death. Author of the trust has not expressly reserved any right or power of revocation. Facts would indicate that the beneficiary has been receiving the benefit of the trust. Therefore, in our view, the share cannot be entrusted to the legal heirs. The company, in our view, has rightly refused registration of transfer of share in the register of members.

8. We may however point out that the company should take note of or recognise the trust which has been brought to its notice otherwise than by entry in the register. That being the legal position, we are of the view that the Company Law Board was not justified in directing the company to transfer the share in favour of the respondent. But the company can take note of the existence of the trust. The appeal is therefore allowed. Order of the Company Law Board would stand set aside.