

(1965) 01 CAL CK 0012
In the Calcutta High Court
Case No : Company Petition No. 6 of 1964
In Re: New Monkhooshi Tea Co. Ltd. and Others

Date of Decision : 15-01-1965

Acts Referred:

Companies Act, 1956 — Section 155, 155(1), 155(3), 84(1)
Evidence Act, 1872 — Section 115
Succession Act, 1925 — Section 370, 381

Citation : AIR 1967 Cal 196 : (1967) 1 CALLT 385

Hon'ble Judges : S. Datta, J

Bench : Single Bench

Advocate : Bikash Sen, for the Appellant; S. Ghose, for the Respondent

Final Decision : Dismissed

Judgement

S. Datta, J.—This is an application u/s 155 of the Indian Companies Act, 1956 for the rectification of the share register of the company. The more, material facts relevant for the purpose of deciding the issues between the parties are set out hereinafter.

2. Smt. Kumndini Dasi and her minor sons Rabindra and Arabinda were the joint holders of 600 shares of the Company, bearing numbers 38636 to 38935 and 77899 to 78198. In or about 1957 the company issued bonus shares which entitled the abovementioned joint holders to 300 bonus shares of the company. The company accordingly issued a letter of allotment indicating that the three abovementioned persons were entitled jointly to the 300 bonus shares. The company however, in fact issued a share certificate which bore the name of one of the joint holders only, namely, Smt. Kumudini Dasi. On or about the 4th day of July 1960 the said Kumudini Dasi armed with the said share certificate for 300 bonus shares bearing distinctive numbers 115542 to 115841 in her sole name made a gift of the said 300 shares to her daughter Kiron Kana Dasi. Smt. Kumudini Dasi, however, did not execute any transfer deed in favour of her daughter, the donee, and did not send the shares for registration of the transfer in accordance with the provisions of the Companies Act. In these circumstances,

on or about 21st day of August 1960, Smt. Kumudini Dasi died. Thereafter, Smt. Kiron Kana Dassi obtained a succession certificate for 400 shares of the said company on the footing that she was entitled to 800 shares which stood in the name of her mother alone and of which her mother had made a gift to her and 100 shares out of the remaining 600 shares which devolved on her by reason of the death of her mother. Smt. Kiron Kana Dasi fortified by this succession certificate claimed rectification of the share register. The company, however, refused to concede to the request of the applicant, Sm. Kiron Kana Dasi on the ground, inter alia, that under Article 53 of the company upon the death of the two joint holders out of three joint holders, the shares devolved on the surviving joint holder, namely, Arabinda and further on the ground that the share certificate for 300 shares was evidently issued in the name of Sm. Kumudini Dasi under some mistake or misapprehension of facts for the register records the names not only of Sm. Kumudini Dasi but also of her sons, Rabindra and Arabinda as the owners of these 300 bonus shares. Moreover it was pointed out that Arabinda was claiming to be solely entitled to these shares under the Articles of the Company and consequently they cannot pay it to the applicant, Sm. Kiron Kana Dasi.

3. In these circumstances, the matter was set down for hearing on evidence and the following issues were settled:--

1. Was Kumudini Dassi the sole registered owner of 300 shares Nos. 115542 to 115841?

If so, is the petitioner entitled to the same?

2. Is the petitioner entitled to 100 shares out of the shares Nos. 38636 to 38935 and 77899 to 78198 registered in the joint names of late Kumudini Dassi and her two minor sons, Rabindra Kumar Das and Arbinda Kumar Das?

3. Is the petitioner entitled to 180 Bonus shares claimed in paragraph 14 of the petition?

4. To what relief, if any is the petitioner entitled?

4. Mr. S. Ghose, learned counsel appearing for the company, first submitted that it is abundantly clear from the facts that Sm. Kumudini Dasi, Rabindra and Arabinda, the registered owners of the original 600 shares, were also the owners of 300 bonus shares. The facts in support of this fact are so overwhelming that the presumption arising out of the issue of the share certificate must yield to it.

5. It is beyond doubt that the 600 shares originally stood in the names of Sm. Kumudini Dasi and her minor sons Rabindra and Arabinda. It is also clear from the letter of allotment that these 300 shares were meant to be issued to these three persons jointly as owners of the original 600 shares. The register of members of the company clearly shows that these three persons are the recorded joint holders or owners of these 300 shares. Sm. Kiron Kana Dasi also in several letters asserted that the recorded owners of 900 shares which included

300 bonus shares were the three persons, Sm. Kumudini Dasi, Rabindra and Arabinda. In the application for succession certificate Sm. Kiron Kana Dasi reiterated the statement. The succession certificate itself shows that the recorded owners of the said 900 shares which included 300 bonus shares belonged to Sm. Kumudini Dasi, Rabindra and Arabinda jointly. Hence, in my view, the contention advanced on behalf of the company should be upheld and it must be held that the presumption offered by the share certificate has been rebutted.

6. Mr. Ghose further submitted that if the applicant relies upon the deed of gift for registration of the said 300 bonus shares, then she is faced with further difficulty. The deed of gift does not comply with the requirement of Section 155 of the Companies Act for there is no duly stamped transfer deed signed by the owner, that is to say, Sm. Kumudini Dasi. Hence in my opinion, this contention is well founded.

7. Mr. Ghose further submitted that the succession certificate for 400 shares cannot enable the applicant to rightly claim rectification of the register. In view of Article 53 of the Articles of Association of the company the shares belonged and were recorded in the name of the surviving joint holder Arabinda. Hence a succession certificate to the estate of the deceased, Kumudini, one of the former joint holders, cannot be of any avail, for, the shares do not belong to her estate any more upon her death. It had devolved under the Articles on her son Arabinda who was the only surviving holder of the shares. In my opinion, again, this contention advanced on behalf of the company is well founded.

8. Mr. Ghose further submitted that the succession certificate can enable the applicant to claim or realise dividend but cannot enable the applicant to get her name registered in the share register of the company, for, a share is not a debt. Section 370 of the Succession Act deals with the scope of a succession certificate. A succession certificate may not only include a debt but also include securities. A share is a security under the Act. Hence prima facie it comes within the fold of the succession certificate.

9. Section 370(b) provides, inter alia, as follows:-

"2. For the purposes of this Part "security" means--

(c) any stock or debenture of, or share in, a company or other incorporated Institution."

10. This makes the position crystal-clear. Hence the succession certificate can enable the applicant to have the shares transferred in her name if she is otherwise entitled. In this view of the matter, I reject the contention advanced on behalf of the company on this point.

11. Mr. Ghose further submitted that the succession certificate refers to 400 shares out of 900 shares without specifying which of the 400 shares belonged to the estate of Sm. Kumudini Dasi. Hence, the company cannot give effect to this

order as it is not competent to divide and allot the shares. In case of dispute such division or allotment can only be made by a competent Court of the land. In this connection he relied upon the decision of Sm. Hemlata Saha Vs. Stadmed Private Ltd. and Others, where it was held that even a company Court in exercising its jurisdiction u/s 155 cannot partition the shares not to speak of the company. One of the grounds was that there was no knowing what the estate of the deceased consisted of and what properties would fall in the shares of the parties after the partition of the general estate. The other ground was that the company Court in exercising its jurisdiction u/s 155 has not been vested with the powers to divide and allot the shares even if the shares were the only property of the deceased. In my opinion again on these grounds this contention advanced on behalf of the Company seems to be well founded.

12. Mr. Bikash Sen, however, submitted that the 300 bonus shares given to his client by her mother are easily identifiable, for in order to find out what the order is directed against it is permissible to look into the pleadings. In this connection, he relied upon the case of Srinath Dass Vs. Hari Pada Mitter, and others where in order to construe the decree the Court looked into the pleadings for there was ambiguity. In the present case, the order by itself savours of no ambiguity. It is unequivocal. It clearly mentions that 400 shares out of 900 shares standing in the names of Sm. Kumudini Dasi, Rabindra Nath Das and Arabinda Das. Hence there is no scope for ambiguity. Even if the petition is looked at, the position does not improve for if in the petition mere is an averment that these 900 shares belonged to these three persons though it must be said that there is a mention of the numbers of the 300 shares. Hence even taking the petition and the order itself the situation does not favour the applicant. In this construction of the succession certificate, in my opinion, the rule laid down in the case of Srinath Dass Vs. Hari Pada Mitter, and others has no application.

13. Mr. Sen further submitted that though the entries in the share register are decisive yet me company is estopped by reason of the fact mat it had issued a share certificate in the sole name of Sm. Kumudini Dasi who on the basis of that assertion in the share certificate made a gift of those shares to her daughter Sm. Kiron Kana Dasi. In this connection he has strongly relied upon the case of Tomkinson v. Balkis Consolidated Co. Ltd. reported in (1891) 2 QB 614 and 622.

14. In order to meet this contention Mr. Ghose in reply urged several points. Mr. Ghose submitted that the estoppel is a question of fact or at the least a mixed question of fact and law and therefore this contention cannot be allowed to be raised in the absence of proper pleading.

15. It is well established that the plea of estoppel involves questions of facts. There is no pleading in the petition. There is again no pleading in the reply. There was no attempt to raise any issue on estoppel. In fact no issue was raised on estoppel. Hence, in my opinion, the applicant cannot be allowed to raise the plea of estoppel at this stage.

16. Mr. Ghose further submitted that the plea of estoppel proceeds on the basis that the person who was induced to act by the representation of another person is not aware of the true facts. In this case, however, it is clear so far as the applicant is concerned that she had knowledge that these shares belonged to the three persons and were recorded as such in the register of members. Hence, the plea of estoppel is unfounded on facts.

17. The applicant proceeded herself on the basis that three persons were originally the recorded owners in her petition for share certificate. The order for succession certificate also indicates clearly that the Court proceeded on the basis that the names of three persons appeared as the owners of these shares. Hence there is no question of the applicant being misled by this representation contained in the share certificate. In this connection a subsidiary question arose, namely, who can rely on estoppel in other words, whether it is Kumudini Dasi who can rely on estoppel or Sm. Kiron Kana Dasi, her daughter? In my opinion, it is primarily Sm. Kumudini Dasi who can rely on estoppel. If it be so, it is again evident, that she knew that the original 600 shares belonged to them three. She also knew that the bonus shares were issued in respect of these 600 original shares and further she knew from the letter of allotment that these shares were meant to be allotted in the names of these three persons including herself. Hence, in my opinion, again it is clear that even if Sm. Kumudini Dasi is the person primarily concerned in the plea of estoppel she had knowledge of the true facts. Her daughter claiming through her cannot take advantage of her ignorance. Sm. Kiron Kana Dasi, in my opinion, as heir of the deceased lady her mother could rely upon estoppel assuming her mother had no knowledge of the facts. She again cannot do so for she had full knowledge or the same as has been indicated earlier. Therefore the plea of estoppel is of no avail to the applicant. The plea of estoppel accordingly does not fall within the ambit of Section 115 of the Evidence Act. It may now be considered whether it falls within the principles of the case reported in (1891) 2 QB 614 assuming that there is a difference between the law on the point laid down in Section 115 of the Evidence Act and the Tomkinson's case 1891 2 QB 614. The English case can be distinguished easily. There was not only a share certificate but there was also a certificate issued by the company to enable the broker to deal with the shares. Here there is no evidence that the share certificate was issued to enable Sm. Kumudini Dasi to deal with the shares. Moreover no certificate besides the share certificate was issued to Sm. Kumudini Dasi enabling her to deal with the shares as in Tomkinson's case 1891 2 QB 614. Hence Tomkinson's case has no application.

18. Mr. Bikash Sen further submitted that u/s 381 the company was bound to act upon the share certificate. This is apparently so. But then if the shares did not belong to the estate of the deceased no share certificate could absolve the company from this obligation to get discharge from the rightful owner. In this case under the Articles Arabinda is the rightful owner. Therefore the succession corticated cannot be of any avail.

19. Mr. Sen further submitted that by virtue of the succession certificate he was entitled to get 100 shares out of the remaining 600 shares besides the said 300 shares and in any event entitled to 180 shares. In my opinion, for reasons already given she is not entitled to be so. Mr. Chose further submitted that in any event the Court's jurisdiction in this case has not been attracted, for, in order to attract the jurisdiction of the Court both the conditions mentioned in Clauses (a) and (b) of Clause (1) of the section has to be satisfied. If those conditions precedent are not satisfied, then there is no question of the application of the provisions of Clause (3). In my opinion this is so. In other words, there is no scope for determining any question relating to title or giving any incidental relief. In this case the applicant pressed for rectification of the register. The company in reply stated that under the provisions of Article 53, the company could not do so. Mr. Sen, in order to get rid of this difficulty, relied upon the words "except as ordered by the Court or provided by a statute". In this case there has not been Any order by a Court previously. The statute again does not state that the company is bound to act on the succession certificate though the properties did not belong to the estate of the deceased. In any event, the Succession Act read with the Companies Act does not compel the company to act on the succession certificate as obtained in this case. Hence, in my opinion, it is clear that there has been no default. In this connection the case of *Kasiviswanathan v. Indo-Burma Petroleum Co. Ltd.*, reported in AIR 1936 Rang 52 may be referred to with advantage. Hence in my opinion the issues have to be answered in the following manner:--

Issue No. 1-- No. It does not arise, Issue No. 2--No. Issue No. 3--No. 20.

20. In the result, it is evident that the application must be dismissed with costs.

21. In the circumstances of this case, I will give only a token cost to the respondent company assessed at Rs. 170/-. The applicant is accordingly directed to pay Rs. 170/- as costs to the Respondent Company.