
(2014) 07 AP CK 0079

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5822 of 2012

J.M. Johnson and Others

APPELLANT

Vs

Y.S. Thomas Reddy and Others

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14 19(1)(f) 31 31(2)

Citation : (2015) 4 ALT 656

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : A. Prabhakara Sarma, Counsel, Advocate for the Appellant; Y. Krishna Reddy, Counsel, Advocate for the Respondent;

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.

1. This Revision is filed challenging the order dt. 06-11-2012 in I.A. No. 1437 of 2012 in O.S. No. 91 of 2011 of the IV Additional District Judge (F.T.C.), Anantapur. The respondent Nos. 1 and 2 herein had filed the said suit to declare that the registered sale deed No. 6858/2009 executed in favour of 1st defendant by defendant Nos. 2 and 3 is void, to cancel the same and to direct the 1st defendant to deliver up the original sale deed to them.

2. As per the averments in the plaint, 5th defendant is a company registered in 1947 under the Indian Companies Act, 1913 and 4th defendant is its subsidiary and a Diocese having control over the properties of 5th defendant in the Rayalaseema area of erstwhile State of Andhra Pradesh. The plaintiffs contended that they are members of 5th defendant company having paid monthly subscription to 4th defendant Diocese and that they have interest in the company's movable and immovable properties. According to them, defendant Nos. 2 and 3 representing 5th defendant have executed a sale deed on 22-09-2007 (which was subsequently registered as sale deed No. 6858 of 2009)

without having any authority to do so by way of fraud, misrepresentation and forgery. They also contended that 5th defendant had not permitted defendant Nos. 2 and 3 to sell these properties and since plaintiffs apprehend that the sale deed, if left outstanding, would cause them injury, being members of 5th defendant-company, they filed the suit.

3. I.A. No. 1437 of 2002 has been filed by defendant Nos. 2 and 3 contending that the plaintiffs have no cause of action to file the suit. Several other contentions are also raised with which presently we are not concerned including the plea of bar of limitation and locus standi of plaintiffs.

4. By order dt. 06-11-2012, the Court below dismissed the said application holding that the contentions raised by defendant Nos. 2 and 3 in the said I.A. need to be gone into in the suit. It concluded that the suit cannot be rejected basing on mere allegations or self-serving statements of defendant Nos. 2 and 3 and that for deciding whether the plaint discloses cause of action or not, Court has only to see the averments made in the plaint and the accompanying documents relied upon in the plaint.

5. Challenging the same, this Revision is filed.

6. The learned counsel for petitioners/defendant Nos. 2 and 3 contends that the order passed by the Court below in refusing to reject the plaint is erroneous; the basis for filing the suit is the pleading in the plaint that plaintiffs/respondent Nos. 1 and 2 are members of the 5th defendant-company through 4th defendant Diocese and they have interest in the movable and immovable properties of 5th defendant; even if the said contention is accepted, since a member of the company has no interest in the properties of the company, respondent Nos. 1 and 2 have no locus to file the suit and question the alienation made by defendant Nos. 2 and 3. He also relied upon the decisions in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, and a recent Division Bench of this Court reported in *Sanofi Pasteur Holdings SA v. Department of Revenue, Ministry of Finance* [2013] 213 Taxman 504/30 (A.P.) (D.B.) and contended that a company registered under the Companies Act is a legal person, separate and distinct from its individual members and its property is not the property of the shareholder.

7. The counsel for the respondents 1 and 2/plaintiffs contends that the order passed by trial court is correct and it had rightly dismissed the I.A. filed by petitioners to reject the plaint.

8. I have noted the submissions of both sides.

In *Charanjit Lal Chowdhury* (supra), the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950 was challenged by the holder of one ordinary share in the said company on the ground that it is a piece of discriminatory legislation, that it deprived the petitioner of the right to property secured by Article 31 of the Constitution, the right to acquire, hold, or dispose of

property guaranteed by Article 19(1)(f) of the Constitution and right to equal protection guaranteed by Article 14 of the Constitution. The Supreme Court rejected the contention that by taking over the management and administration of the said company, the property of the petitioner as a shareholder has been taken away. It held that by virtue of the impugned legislation no property or interest of the petitioner himself, as a shareholder of the Company, has been taken possession of by the State or any other authority appointed under it, as contemplated by Art.31(2) of the Constitution. It held:

"52. The petitioner as a shareholder has undoubtedly an interest in the company. His interest is represented by the share he holds and the share is a movable property according to the Indian Companies Act, with all the incidence of such property attached to it. Ordinarily, he is entitled to enjoy the income arising from the shares in the shape of dividends; the share like any other marketable commodity can be sold or transferred by way of mortgage or pledge. The holding of the share in his name gives him the right to vote at the election of Directors and thereby take a part, though indirectly, in the management of the company's affairs. If the majority of shareholders passed which would be binding on the Company and lastly, he can institute proceedings for winding up of the Company which may result in a distribution of the net assets among the shareholders.

53. It cannot be disputed that the petitioner has not been dispossessed in any sense of the term of the share he holds. Nobody has taken the shares away from him. His legal and beneficial interest, in respect to the shares he holds is left intact. If the Company declares dividend, he would be entitled to the same. He can sell or otherwise dispose of the shares at any time at his option. The impugned Act has affected him in this way that his right of voting at the election of Directors has been kept in abeyance so long as the management by the statutory Director continues; and as a result of that, his right to participate in the management of the Company has been abridged to that extent. His rights to pass resolutions or to institute winding up proceedings have also been restricted though they are not wholly gone; these rights can be exercised only with the consent or sanction of the Central Government. In my opinion, from the facts stated above it cannot be held that the petitioner has been dispossessed from the property owned by him....."

9. In *Rustom Cavasjee Cooper* (supra), the Supreme Court held that the shareholder of a Company is not the owner of its assets, he has merely a right to participate in the profits of the Company subject to the contract contained in the Articles of Association.

10. This principle has been followed by a Division Bench of this Court, of which I was a member, in *Sanofi Pasteur Holdings SA* (supra). This Court held that

"....The generic principles flowing from the decisions in *Charanjit Lal Chowdhury*; *Bacha F. Guzdar*; *Maharani Ushadevi*; *Western Coalfields Ltd.* and *LIC of India* could be summarized as under:-

(i) A shareholder's interest in a company is represented by his shareholding, which is immovable property with all the attributes thereof.

(ii) A company as a juristic persona is distinct from its shareholders. It is the company which owns the property, not the shareholder(s).

(iii) The rights of shareholders are such as are delineated in provisions of the Companies Act. A shareholder, while having no rights of ownership in the assets of the company, has a voice in administering the affairs of the company and would be entitled, as provided by the Articles of Association to a declaration of dividends, distributed out of profits of the company to the shareholders.

The above principles find resonance in several other decisions including *Rustom Cowasjee Cooper Vs. Union of India (UOI)*, (the Bank nationalization case) where the Court reiterated the principle that a company registered under the Companies Act is a legal person, separate and distinct from its individual members; its property is not the property of the shareholders who have merely an interest in the company arising under the Articles of Association, measured by a sum of money for the purpose of liability and by sharing the profit; and that where companies are incorporated for a lawful purpose their properties are owned by them and there is no reason for even taxation purposes that their property should be treated as belonging to the shareholders..."

11. Since the basis of the suit filed by respondent Nos. 1 and 2 is that they have interest in the immovable properties of 5th defendant on account of the fact that they are its members and shareholders and that its property was illegally alienated by petitioners herein, I am of the opinion that they have no cause of action to file the suit because under law, as set out above, they have no right in the assets/properties of the company.

12. In this view of the matter, I am of the opinion, that the Court below erred in refusing to reject (sic. allow) the application I.A. No. 1437 of 2012 in O.S. No. 91 of 2011 filed by petitioners to reject the plaint.

13. Therefore the CRP is allowed; the order dt. 6.11.2012 in I.A. No. 1437 of 2012 in O.S. No. 91 of 2011 of the court below is set aside; and the said I.A. is allowed. Consequently, the plaint submitted by respondent Nos. 1 and 2 in the said suit is rejected. No costs. Miscellaneous applications pending if any, in this Civil Revision Petition shall stand closed.