
(2004) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : First Appeal No. 229 of 1994

Khushal Jain

APPELLANT

Vs

Sidharth Tubes Ltd.

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Companies Act, 1956 — Section 108

Citation : (2005) 1 BC 553 : (2005) 57 SCL 380

Hon'ble Judges : A.K. Awasthy, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; Rashmi Pandit, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Awasthy, J.—Appellant/plaintiff has filed the appeal u/s 96 of the CPC against the judgment and decree dated 10-8-1994 passed in Civil Suit No. 85-A/93 by 2nd Additional District Judge whereby the suit for declaration and injunction of the appellant was dismissed.

2. The case of the appellant/plaintiff is that the appellant has purchased the share of 11,000 from M/s. Sidharth Tubes Ltd. each share having value of Rs. 10 as described in the schedule of the plaint. That the plaintiff has purchased about 50% of these shares from the brokers and about 50% of the shares from the company. It is alleged by the plaintiff that the entire amount for the purchase of share was paid by him and the share certificate along with the transfer deed was obtained by him. It is contended by the plaintiff that from his office all 110 share certificates were stolen along with the transfer deed of the shares. That the plaintiff has sent the notice to the defendant M/s. Sidharth Tubes Ltd. to stop the transfer of the alleged shares and restrained the defendant to pay the dividends of the shares to the brokers or the shareholders.

3. The learned Trial Court has dismissed the suit holding that the plaintiff has

failed to prove the loss of the share certificates and the transfer deed. The learned Trial Court has further held that M/s. Sidharth Tubes Ltd. was entitled to pay the amount of the dividends to the persons in whose name the share was issued and the plaintiff is not entitled to get the injunction and declaration prayed by him.

4. This fact is rightly not disputed that the share belonged to M/s. Sidharth Tubes Ltd. and the plaintiff has purchased the shares from some of the shareholders and some shares from the brokers. It is" also not in dispute that brokers or the shareholders from whom the plaintiff has purchased the shares has not informed the defendant M/s, Sidharth Tubes Ltd. about the transfer of the share in favour of the plaintiff. The defendant M/s. Sidharth Tubes Ltd. will be entitled to transfer the shares in favour of the plaintiff only in the case the shareholders or the brokers inform in writing about the fact that they have sold the shares to the plaintiff. Unless, M/s. Sidharth Tubes Ltd. is not informed by the broker or the shareholders that they have transferred the share to the plaintiff, the defendant company could not transfer the share to the plaintiff.

5. The plaintiff has not made the shareholders or the brokers from whom he has purchased the shares as a party in suit. The plaintiff has not filed any papers to show that the shareholders or the brokers from whom the shares were purchased have informed the defendant M/s, Sidharth Tubes Ltd. about the sale of the shares to the plaintiff. According to the contract between the defendant M/s. Sidharth Tubes Ltd. and the shareholders, the shares in the name of persons other than the shareholder can only be substituted if the shareholder in writing informs the Company for the transfer of the share. It will be against the rules and hazardous to transfer the shares in the name of the plaintiff without the written consent of the original shareholders. In the aforesaid circumstances, the learned Trial Court has not committed any mistake in holding that the plaintiff is not entitled for the relief of declaration and injunction. In the facts and circumstances of the case, the learned Trial Court has rightly held that the suit is bad for not making the broker and the purchaser as a party in the suit.

6. The appeal is devoid of merits and it is, hereby, dismissed. Parties to bear their own costs. A decree be drawn up accordingly.