

(2012) 03 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2218 of 2011, Civil Miscellaneous Appeal No. 2337 of 2011 and Civil Miscellaneous Appeal No. 4200 of 2011

M/S. Vijay Solvex Ltd. and Another

APPELLANT

Vs

Babu Lal and Others
 Babu Lal and Others Vs Niranjana
Lalji and Others
 Saurabh Data Vs Babu Lal

RESPONDENT

Date of Decision : 14-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Companies Act, 1956 — Section 12, 13, 26, 33, 34
Registration Act, 1908 — Section 17, 49

Citation : (2012) 03 RAJ CK 0060

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon'ble Ms. Justice Bela M. Trivedi

1. All these appeals arise out of the order dated 10th February 2011 passed by the Additional District Judge No. 3, Jaipur Metropolitan, Jaipur, in Civil Misc. Case No. 36/2010 (hereinafter referred to as the lower court), whereby the lower court has partly allowed the application of the respondent Nos. 1 to 5 (original plaintiffs) seeking temporary injunction under Order XXXIX Rule 1, 2 of C.P.C. C.M.A. No. 2337/2011 has been filed by the appellants Babu Lal and others (original-plaintiffs) against the impugned order. All these appeals having arisen out of the same impugned order, they were heard together and are being decided finally at the admission stage, with the consent of learned counsels for the parties, by this common judgment. The short facts giving rise to the present appeals are that the respondent nos.1 to 5 (original plaintiffs) have filed the suit before the lower court seeking various reliefs against the present appellants and other respondents (original-defendants). The relief's claimed in the suit inter alia are for the decree against the defendants nos. 1 to 31 for the partition of the

properties mentioned in Para 17 read with schedules "KA" to "CHHA" by metes and bounds, and for the declaration of 1/2 share of the plaintiffs in the said properties. The plaintiffs have also prayed for mandatory injunction directing the defendants Nos. 1 to 31 to act upon the family settlement dated 20.12.07 and to hand-over the possession of the properties to the plaintiffs as per the said settlement, as also sought permanent injunction restraining the defendant nos.1 to 31 from transferring or selling or creating any interest in the properties mentioned in the said schedules "KA" to "CHHA", which were Joint Family Properties. The plaintiffs have also sought for the relief against the said defendants for rendition of accounts in respect of the said properties. The respondent Nos. 1 to 5 (the plaintiffs) had also filed an application being Civil Misc. Application No. 36/2010, seeking temporary injunction during the pendency of the suit. The said application was resisted by the concerned defendants by filing their respective written statements/replies. The lower court after hearing the learned counsels for the parties and considering the documents on record, partly allowed the said application by the impugned order dated 10.2.2011, whereby the lower court has restrained the defendant nos. 1 to 31 and 36 to 43 from selling, transferring or creating any substantive charge over the immovable properties mentioned in the schedules "KA" to "CHHA", and further directing all the parties to produce periodically the audited or unedited accounts of the companies/partnership firms, managed and controlled by the respective parties. Being aggrieved by the said order, the respective appellants have filed the present appeals.

2. Assailing the impugned order passed by the lower court, the learned counsel Mr. N.M. Sharma for the appellants M/S Raghuvar India Ltd. (original defendant No. 14), vehemently submitted that the suit of the plaintiffs in the present form is not maintainable in the eye of law, in as much as the suit has been filed by Shri Babu Lal s/o Ram Niwas along with Saurabh Agrotech Pvt. Ltd., which is a company incorporated under the Companies Act and also along with two partnership firms registered under the Partnership Act and by the HUF of Babu Lal, seeking partition of the properties mentioned in the Schedules annexed to the plaint and that too against the set of companies, which have been shown as the assets of the H.U.F. He also submitted that the said plaintiff Babu Lal, though seeking partition of the Joint Family Properties has not impleaded his own sons and other coparceners as parties to the suit and has not included the properties owned and managed by the plaintiffs in the schedules annexed to the plaint. In short, according to Mr. Sharma, when the suit itself is bad for non-joinder of necessary parties and for mis-joinder of the parties and of causes of action, and when the suit is not tenable in the eye of law, the lower court should not have granted any temporary injunction in favor of the plaintiffs. Mr. Sharma further submitted that the order passed by the lower court is thoroughly mis-conceived and if allowed to stand, would cause not only hardship to the appellant companies but also would practically affect the day to day businesses of the said companies. The learned senior counsel Mr. A.K. Sharma appearing for M/S Vijay

Solvex Ltd.(original defendant No. 24), in support of the submissions made by learned counsel Mr. N.M. Sharma, submitted that the lower court had not taken into consideration the contentions raised by the concerned defendant in its reply with regard to the partition of Joint Family Properties, which had already taken place in the year 1959, and which was also subsequently ratified by the plaintiff Babu Lal himself on his becoming major. According to learned counsel Mr. Sharma, the appellant company is not only a separate legal entity but also a listed company and, therefore, there was no question of partition of the said company as sought for by the plaintiffs in the suit. Mr. Sharma also referring to the averments made in the plaint, more particularly in Para 12, submitted that even according to the plaintiffs there was no family settlement, with regard to M/s Vijay Solvex or M/S Raghuvar India Ltd., and that the said companies have been included only in the Schedule "GHA" as if they are the assets of the Joint Family Properties. He also submitted that the lower court had failed to appreciate that the plaintiffs had not been able to show even prima facie that the corpus of the defendant companies was provided by the coparceners of the joint family.

3. The learned senior counsel Mr. N.K. Maloo, appearing for the appellant Niranjan Lal(original defendantno.1) adopting the arguments of the learned counsel Mr. N.M. Sharma and Mr. A.K. Sharma, further submitted that the H.U.F. Known as M/S Pyare Niranjan Lal was already partitioned in the year 1959 and the effect thereof was also shown in the Income Tax Returns of the said H.U.F. in the subsequent years, and thereafter smaller H.U.F. were created by the concerned coparceners for the purpose of carrying on businesses in the name and style of partnership firms. However, runs the submissions of Mr. Maloo, the lower court had failed to consider the said contentions raised by the concerned defendants and also the documents produced by them. According to Mr. Maloo, the plaintiffs had suppressed material facts by not producing the vital documents pertaining to the partition of properties, which had taken place in the year 1959 and therefore, the application of temporary injunction was required to be dismissed by the lower court on that ground alone. Placing reliance on the judgments of Apex Court,more particularly in case of Subodh Kumar and others vs. Bhagwant Namdeorao Mehetre and others, (2007)¹⁰ Supreme Court Cases 571, and in case of Sunil Kumar and another v. Ram Prakash and others, AIR 1988 Mr. Maloo has submitted that even if it is assumed that there was a Joint Hindu Family, the defendant Niranjan Lal being the Karta of said HUF, no injunction could have been granted against the Karta of HUF. Learned counsel Mr. Mahendra Goyal for the appellant Daya Kishan (original defendant No. 3) and learned counsel Mr. Amol Vyas for the appellant M/s Pyare Niranjan Lal HUF (original defendant No. 11) have also adopted the arguments of the other counsels appearing for the other appellants and submitted that the impugned order passed by the lower court being illegal and perverse, deserves to be set-aside.

4. Per contra, learned senior counsel Mr. R.K. Agrawal for the respondent Nos. 1 to 5,(original-plaintiffs) supporting the impugned order passed by the lower court

submitted that the lower court after considering the prima facie case, irreparable injuries likely to be caused to the plaintiffs and the balance of convenience, has passed the impugned order, which is just and proper, and should not be interfered with by this Court. Taking the Court through the various documents which were produced by the plaintiffs before the lower court, Mr. Agrawal has submitted that on 20.12.07, a family settlement had taken place between the Niranjana Lal Data Group, which belonged to the defendants, and Babu Lal Data Group which belonged to the plaintiffs, and that the said settlement was signed by Mr. Vijay Data for N.L.D. Group and by Babu Lal Data for B.L.D. Group. According to Mr. Agrawal, the said settlement was also partly acted upon by the defendant Niranjana Lal and other coparceners and therefore, they can not be permitted to back out from the said settlement. Placing heavy reliance on the decision of the Apex Court in the case of Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd. (2010)7SCC page 1, and in case of Sangram Singh P. Gaekwad and others vs. Shanta Devi P. Gakwad (2005)11 Supreme Court Cases page 314, Mr. Agrawal submitted that though a company incorporated under the Companies Act is a body corporate, in certain situations, its corporate veil can be lifted, and that the suit for partition could be filed against the companies also. Placing reliance upon the decisions of Apex Court in case of Hansa Industries (P) Ltd. and others Vs. Kidarsons Industries (P)Ltd. (2006)8 Supreme Court Cases 531, and in case of Narendra Kante Vs. Anuradha Kante and others, (2010)2 Supreme Court Cases 77, learned counsel Mr. Agrawal submitted that the Family Settlement need not be signed by coparceners and that if a mere memorandum of family arrangement was prepared with regard to the arrangement which had already taken place, such a document did not require registration. He also submitted that the family settlement made by the parties bona fide by making fair and equitable division of the properties amongst various members of the family, must be respected. Mr. Agrawal also relied upon the decision of Apex Court in case of Premlata Nahata v. Chandi Prasad Sikaria (2007)2 Supreme Court Cases, page 551, to submit that mis-joinder of parties or of causes of action would not be fatal to the suit and such defects could be cured with the permission of the lower court. According to him the plaintiff No. 1 Babu Lal is also the Director of the plaintiff No. 2 Saurah Agrotech (P) Ltd. and the partner in the plaintiff nos. 3 and 4 partnership firms and also the Karta of plaintiff No. 5 Babu Lal HUF and therefore all have been impleaded as the plaintiffs in the suit, in as much as the facts of the plaintiffs case are intermingled with each other and are dependent upon each other to claim the reliefs against all the defendants. Lastly, Mr. Agrawal, submitted that there being no jurisdictional error committed by the lower court while passing impugned order, the same deserves to be confirmed. Learned senior counsel Mr. K.K.Sharma appearing for the respondent Data Infosys Ltd. (original defendant No. 15) and for Ajay Data Proprietor of Ajay Containers (Original-defendant No. 31) has supported the submissions made by learned senior counsel Mr. R.K. Agrawal, and further relying upon the decision of Apex Court in case of K.K. Modi Vs. K.N. Modi and others, 1998(3)Supreme Court Cases Page 573, submitted that the family

settlement arrived at between two groups belonging to the same family regarding division of assets should not be lightly interfered with by the Courts when it has been substantially acted upon by the parties.

5. In the instant case before adverting to the submissions made by the learned counsels for the parties it would be necessary to broadly refer to the allegations and averments made in the plaint filed by the respondent Nos. 1 to 5 (original plaintiffs). As transpiring from the copy of the plaint, submitted by the learned counsels for the appellants to the court, the suit has been filed by the plaintiff No. 1 Babu Lal S/o Late Shri Ramniwas, plaintiff No. 2 Saurabh Agrotech Pvt. Ltd. through its Director Shri Babu Lal, plaintiff No. 3 Vijay Industries through its partner Shri Babu Lal, plaintiff No. 4 Vijay Teen Industries through its partner Shri Babu Lal and plaintiff No. 5 Babu Lal HUF through its "Karta" Shri Babu Lal. The said plaintiffs have filed the suit against as many as 35 defendants and the application seeking temporary injunction in the said suit against as many as 43 defendants. It is not clear whether the defendant Nos. 36 to 43 who have been shown as defendants in the T.I. Application have been impleaded as party-defendants in the suit or not, as in the copy of the plaint submitted by the learned counsel for the appellants, the said defendants have not been shown as defendants in the plaint. Be that as it may, out of the said defendants, defendant Nos. 1 to 9 are the family members of the defendant No. 1 Niranjana Lal who happens to be the uncle of plaintiff No. 1 Babu Lal, and the other defendants are either Private Limited Companies, or Public Limited Companies, partnership firms, proprietary concerns, HUF, Banks, Registrar of Companies etc. As stated earlier, the said suit has been filed seeking various reliefs regarding the partition of the alleged joint family properties, mandatory injunction, permanent injunction, rendition of accounts etc. As per the case of the plaintiffs, the late Shri Pyare Lal had three sons named Gangadeen, Ramniwas and Niranjana Lal. Late Shri Gangadeen died issue-less. The plaintiff No. 1 Babu Lal Data happens to be the son of Ramniwas. The said Babu Lal has two sons named Deepak Kumar and Ajay Kumar. The defendant No. 1 Niranjana Lal has two sons named Vijay Kumar and Daya Kishan, who are defendant No. 2 and 3 respectively. It is pertinent to note that though the plaintiffs have joined the sons and their respective spouses and daughters of the said defendant No. 1 Niranjana Lal, the plaintiffs have not impleaded the sons of plaintiff No. 1 Babu Lal i.e. Deepak Kumar and Ajay Kumar as either party-plaintiffs or the defendants in the suit. It is needless to say that in a suit for partition of the alleged joint family properties, all the coparceners would be necessary parties. It is also significant to note that the plaintiffs have impleaded the companies, partnership firms and proprietary concerns and HUFs as the party defendants, and the said companies and firms have also been shown as the properties or the assets of the HUF in the schedule "Gha" annexed to the plaint. This court fails to understand as to how the companies which are incorporated under the Companies Act having perpetual seal and separate entity could be the assets of the HUF as alleged by the plaintiffs and as to how the companies could be divided by metes and bounds by

way of partition as prayed for in the suit. The plaintiffs in the suit have also prayed for mandatory injunction seeking direction against the defendant-companies alongwith other defendants to act upon the family settlement, alleged to have taken place on 20.12.07 between the Niranjana Lal Data Group and Babu Lal Data Group, and have also sought the direction against the said companies to execute the documents and handover the possession of the properties of the said companies and firms etc. This court also fails to understand as to how the alleged family settlement between the NLD Group and BLD Group would be binding to the defendant companies and firms, apart from the issue as to whether the alleged document dated 20.12.07 could be called a family settlement. Under the circumstances this court finds much substance in the submissions made by the learned counsels for the appellants that the suit filed by the plaintiffs is not only bad for misjoinder of parties and of causes of action, but also for non-joinder of necessary parties and that the suit in the present form would not be maintainable in the eye of law.

6. So far as merits of the case are concerned, according to the respondents-plaintiffs, all the properties mentioned in the Schedules "Ka" to "Chha" annexed to the plaint, were purchased from the nucleus of the joint family properties, and as per the family settlement dated 20.12.07, the said properties were required to be divided amongst the family members of the plaintiff No. 1 and the defendant Nos.1 to 9. In this regard, it is pertinent to note that the entire suit of the plaintiffs is based on the so-called family settlement which had allegedly taken place between the NLD group and BLD group on 20.12.07. From the bare perusal of the said document it transpires that it is the minutes of the meeting of Data Group Family dated 20.12.07, which was signed by Mr. Vijay Data for NLD Group and Mr. Babu Lal Data for BLD Group. Apart from the fact that there is not a whisper in the said document that the corpus of the companies mentioned in the said document was provided by the HUF or that the other properties mentioned in the said document were the HUF properties, the said document has also not been signed by the other coparceners of the alleged HUF except by Mr. Vijay Data and Mr. Babu Lal Data. Such a document by no stretch of imagination could be said to be a family settlement. However, even if it is believed to be a family settlement, and even if it is held that the same was not required to be signed by all the coparceners, then also there is nothing on the record to suggest that it was a memorandum prepared after the family arrangement which had already been made earlier, not required to be registered. It is settled legal position that if the terms of family settlement are reduced into writing, the document is required to be compulsorily registered in view of Section 17 of the Registration Act. In this regard beneficial reference of the observations made by the Apex Court in case of Hansa Industries (P) Ltd. & Ors. Vs. Kidarsons Industries 8 SCC, 531 and in case of Narendra Kante Vs. Anuradha Kante & Ors. 2010 (2) SCC, 77, is required to be made. In view of the settled legal position, the document relied upon by the plaintiffs which according to them was family settlement arrived at between NLD Group and BLD Group on 20.12.07 required registration as it was not a

memorandum prepared after the family settlement. It is also equally settled legal position that the document requiring compulsory registration u/s 17 of the Registration Act if not registered, could not be received in evidence in view of Section 49 of the said Act.

7. It was vehemently submitted by the learned counsel Mr. R.K. Agrawal for the concerned respondents-plaintiffs that the said family settlement though not signed by the defendant No. 1 Niranjan Lal, he and other coparceners had acted upon the same by transferring the shares of the concerned companies in favour of the plaintiff Babu Lal and, therefore, such a settlement would be binding to the said defendants. The said contention has been vehemently challenged by the learned counsels for the appellants referring the respective written statements/ replies filed by the defendants before the trial court, and they have further contended that there was no HUF or the properties of HUF as alleged by the plaintiffs and that the partition of HUF properties of M/s. Pyare Lal Niranjan Lal had already taken place as back as on 15th March, 1959. According to the said defendants, the plaintiffs had suppressed the material facts and documents from the court with regard to the said partition and properties and, therefore, not entitled to the reliefs claimed in the suit and the temporary injunction application.

8. In this regard it is pertinent to note that though the concerned defendants had raised contentious issues as regards the maintainability of the suit, misjoinder of parties and of causes of action, suppression of material facts by the plaintiffs etc., the lower court has not considered the same and has held that the plaintiffs had established the prima facie case in their favour. In the opinion of this court such a finding of the lower court in the impugned order is not only erroneous but also perverse. When the suit on the face of it suffered from the misjoinder of parties and of causes of action and was not prima facie tenable in the eye of law, the lower court has committed serious error of law and facts in holding that the plaintiffs had established a prima facie case. If the plaintiffs were not entitled to the final reliefs in the suit, they could not be granted temporary injunction as prayed for during the pendency the suit.

9. It was sought to be submitted by the learned senior counsel Mr. R.K. Agrawal for the respondents-plaintiffs that the companies and firms were created from the nucleus of the joint family for better handling of businesses, to keep them manageable for tax planning and for various other reasons. According to him since the companies were managed by the family members, the corporate veil was required to be lifted to hold that the said companies were the properties of the joint family only, liable to be partitioned. Pressing into service, the doctrine of identification as propounded by the Apex Court in case of Reliance Natural Resources Ltd. (supra), the learned counsel Mr. Agrawal has submitted that the company is identified with such of its key personnel through whom it works and the actions of such personnel are deemed to be the actions of the company itself.

10. In the opinion of this court there is hardly any substance in the said submission of the learned counsel Mr. Agarwal. The appellants companies being

the company incorporated under the Companies Act are separate juristic person, controlled and managed by Board of Directors and the share-holders as per the Memorandum of Association and Articles of Association of the respective companies, and could not be managed by the HUF nor could be treated as the properties of HUF, liable to be divided by metes and bounds as prayed for by the plaintiffs in the suit. Some of the companies are also listed in the Stock Exchanges as stated by the learned counsels for the appellants. If that be the case, the shares of such companies would be freely transferable in the market and their governance would be regulated by the SEBI and not by the coparceners of HUF as sought to be submitted by learned counsel Mr. Agrawal.

11. In this regard, it would be also necessary to refer to some of the provisions of the companies Act, 1956. Section 12 of the said Act deals with the mode of forming incorporated company and Section 13 thereof deals with the requirement with respect to the memorandum of every company. Section 26 deals with the Articles of Association prescribing regulations for the company, and Section 33 deals with the Registration of memorandum and Articles of Association. As per Section 34, on the registration of the memorandum of company, the Registrar has to certify that the company is incorporated. From the date of the incorporation mentioned in the certificate of incorporation, such of the subscribers of the memorandum and other persons, as may from time to time be members of the company, would be a body corporate by the name contained in the memorandum, capable forthwith of exercising of the functions of an incorporated company and having perpetual succession and common seal. A company registered under the Companies Act is a legal person, separate and distinct from its individual members and the property of the company could not be said to be property of the share-holders. As per the legal position settled by the Apex Court in various decisions, the share-holders of a company are not the owners or the assets of the company but would have only limited interest in the company, measured by a sum of money for the purpose of liability and a right to participate in the profits in the company, subject to the contract contained in the Articles of Association, and that the Directors of the Company are also merely the agents of the company for the purpose of management. Hence, the submission of Mr. Agrawal that the appellant-companies are the assets or properties of the HUF cannot be countenanced. It is true that in certain cases the Apex Court has held that the corporate veil could be lifted where a Statute itself contemplates lifting of the veil, or where fraud or improper conduct is intended to be prevented, or where a taxing Statute or a beneficent Statute is sought to be evaded. However, no such case is made out by the plaintiffs, for lifting the corporate veil and for holding that the appellant companies are in fact the properties of the HUF and managed by the defendant No. 1 and his family members.

12. The appellants-companies are entitled to manage their state of affairs as per their respective Memorandum and Articles of Association and are also entitled to expand their businesses by transferring, alienating, creating charge over the

properties. They could not be enjoined in the manner enjoined by the lower court. Such injunction would not only be illegal and perverse, but would also cause lot of hardship and irreparable loss to the appellants-companies.

13. In this regard it is also pertinent to note that as per the settled legal position it is not open to the court to grant injunction in favour of the plaintiffs even if the plaintiffs had made out case for irreparable injury and balance of convenience, when the plaintiffs had failed to prove prima facie case in their favour. It has been held by the Apex Court in case of *Kashi Math Samsthan & Anr. Vs. Srimad Sudhindra Thirtha Swamy & Anr.* AIR 2010 SC 296 that :

In order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out, prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

14. In the instant case, the plaintiffs having failed to establish prima facie that the properties mentioned in the Schedules annexed to the plaint were the joint family properties and that the family settlement dated 20.12.07 had taken place amongst the coparceners of the HUF, and since this court has found prima facie that the suit filed by the plaintiffs suffers from the vice of misjoinder of parties and of causes of action and also of non-joinder of necessary parties, and would not be maintainable in the eye of law, the injunction granted by the lower court deserves to be vacated forthwith. However, interest of the respondents-plaintiffs could be safeguarded by directing the concerned appellants-defendants to maintain and produce half-yearly/annually, the audited and/or unaudited accounts of the respective companies, firms proprietary concerns before the lower court during the pendency of the suit.

15. In that view of the matter, the impugned order passed by the lower court deserves to be set aside so far as the injunction granted against the appellants-defendants from transferring, selling, alienating or creating charge over the immoveable property is concerned and deserves to be confirmed so far as the production of audited and unaudited accounts is concerned. The impugned order is modified accordingly. In the aforesaid premises, all the Civil Misc. Appeals except Civil Misc. Appeal No. 2337/11 stand partly allowed and Civil Misc. Appeal No. 2337/11 stands dismissed.