
(1902) 02 MAD CK 0005
In the Madras High Court

Ramakishore Dosjee

APPELLANT

Vs

The Coimbatore Spinning and Weaving Co., Limited

RESPONDENT

Date of Decision : 21-02-1902

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (1903) ILR (Mad) 79 : (1902) 12 MLJ 439

Judgement

1. The main argument advanced in support of this appeal is that the application made by Mahant Bagavan Dosjee for shares in the Coimbatore

Spinning and Weaving Co., was made by him in his capacity as Mahant of the Mutt at Tirupati, that the money paid by him for these shares was a

portion of the funds of the Mutt, that the Mahant being a Byragi had not and could not have had any funds of his own out of which he could have

purchased these shares, that the Directors of the Company must have been well aware that such was the case and that consequently, on Bagavan

Dosjee vacating the post of Mahant, the Company was bound to transfer the shares standing in his name to the name of the plaintiff, his successor

in the office of Mahant. The evidence on the record does not bear out these contentions. It cannot be held that Exhibit XXIII shows that Bagavan

Dosjee applied for the shares in his capacity of Mahant on behalf of the Mutt. The applicant there applies for certain shares, states that he has paid

Messrs. Arbuthnot & Co. a deposit on account of such shares, asks that the shares may be allotted to him, agrees to accept them and requests

that his name may be entered on the register of shareholders. He signs his name as Sreeman Bagavant Dosjee and gives as his address ""Mahant of

Atlieenam Bavajae Mutt, Tirapati."" There is nothing in this application to show that it was made on behalf of the Mutt, or that the money paid for

the shares consisted of Mutt funds. In Exhibit XXIV, an extract from the share register, the shareholder is given as Sreeman Bagavan Dosjee

Nothing is said as to the Mutt having any concern in the transaction. The plaintiff examined no witnesses before the District Court and made no

attempt to prove by evidence as to where Bagavan Dosjee got the money that he paid for the shares or that that money was a portion of the funds

of the Mutt. The learned counsel for the appellant has, at the hearing of this appeal, referred to certain texts in the Hindu Sacred Law books to

show that a Byragi is condemned to a life of perpetual poverty and is incapable of acquiring property for his own use and benefit. Such precepts

cannot be looked on as anything more than counsels of perfection and cannot be held to carry much weight in the absence of clear and satisfactory

proof that, as a matter of fact, Bagavan Dosjee had no private funds at his disposal. Exhibit NN the deed under which Bagavan Dosjee, after he

had been convicted of a criminal offence and committed to jail, appointed the plaintiff as his successor in the office of Mahant and transferred to

him the management of all the Mutt property, does not support the contention now put forward that the executants was not and could not have

been possessed of any private funds, for in that document, he is described as ""living by lands and acquisition from disciples."" It will further be

remarked that in this document in which the various descriptions of property held by the Mutt are set out in considerable detail no mention is made

of the shares in this company. It is only reasonable to assume that if these shares which are of considerable pecuniary value, had been looked upon

by the executant as Mutt property, they would have been mentioned in this document. It must be held that there is no presumption that the money

paid by Bagavan Dosjee belonged to the Mutt and that the plaintiff has completely failed to prove such to be the case.

2. It appears that shortly after Bagavan Dosjee had been sent to jail, the plaintiff as his successor in the post of Mahant paid from time to time

certain sums as a portion of what was due to the company on account of the shares allotted to Bagavan Dosjee. It is further in evidence that the

company received these moneys from the plaintiff, credited them towards what was due on account of these shares, and also that Mr. Stanes on

Behalf of the company in certain correspondence which has been filed as evidence alluded to these shares as being the plaintiff's shares and also as

belonging to the Mahant, The learned counsel who has appeared, here in support of this appeal urges that in consequence of these acts the

company is estopped from denying that the shares are the property of the Mutt and that on Bagavan Dosjee ceasing to be Mahant, the plaintiff by

virtue of his succession to the post of Mahant became the owner of these shares. It is impossible to hold that this contention is a valid one Section

115 of the Evidence Act provides that when a person has by his declaration, act omission intentionally caused or permitted another person to

believe a thing to be true and to act upon such belief, neither he nor his representative can be allowed in any suit between himself and such person

to deny the truth of that thing. It cannot possibly be held that the Spinning Co., by its action led the plaintiff to believe anything. The plaintiff was

presumably aware of all the facts relating to the purchase of the shares, the source from which the money paid for them was derived and the

capacity in which Bagavan Dosjee acted when he bought them. The company had no especial information as to such matters and could not by its

action have caused the plaintiff to believe anything respecting them. It is next urged that when the plaintiff applied to the company to have the

shares in the name of Bagavan Dosjee transferred to his name, the company was bound to comply with his request. It is contended that if the

company had transferred the shares the plaintiff would have satisfied all calls made in respect of them and that the default charged against the

plaintiff in consequence of which the shares were eventually declared to have been forfeited was due to the failure of the company to comply with

the plaintiff's reasonable request that the shares should be transferred to his name. The correspondence shows that the plaintiff applied to have the

shares transferred to his name. The directors of the company replied that they were willing to make the transfer if Bagavan Dosjee would execute

the necessary documents, or in case this could not be arranged if the plaintiff would give them an indemnity bond in the name of the Mutt (Exhibit

E). No application for transfer was ever made by Bagavan Dosjee, and the plaintiff refused to execute an indemnity bond. The result was that after

the necessary formalities had been gone through the shares were declared to have been forfeited. There can be no doubt that the company was

from first to last justified in the course of action that it followed. Article 25 of the Company's Articles of Association provides for the action that it

is necessary should be taken to get shares registered in the name of a person claiming to be entitled to such shares where- no form of transfer

signed by the transferor such as a provided for in Article 20 has been submitted to the company. Article 25 provides that when any person

becomes interested in a share in consequence of the death, bankruptcy etc., of any shareholder, or by any lawful means other than by a transfer in

accordance with article 20, he may upon producing such evidence as the Board thinks sufficient be registered as the holder of the share. It is for

the applicant for registration to produce evidence such as to satisfy the Board that the transfer can be made. In the present case the plaintiff

produced nothing that could be called evidence to show that he as entitled to have the shares standing in Bagavan Dosjee's name transferred to his

name and when the directors, under these circumstances, declined to make the transfer without a bond of indemnity the plaintiff refused to execute

such a bond. On such refusal the plaintiff's proper remedy as the person aggrieved by the order of the directors was to apply u/s 58 of the Indian

Companies Act to a Civil Court for an order to have the Register rectified In the matter of the Bombay Fire Insurance Company, Ld--Ex parte R.

Gilbert ILR 16 B. 398. He did not so apply, but even if he had taken such action his application must have been refused unless he had been able to

show that the directors had acted capriciously and not honestly and reasonably. (Reference may be made to In re Gresham Life Assurance

Society--Ex parte Penney L.R. 8 Ch. 446 and In re Coulfort China Co. (1895) 2 Ch. 404.

3. It is clear that the plaintiff in the present case could not have proved to the satisfaction of a court that the directors acted capriciously and

unreasonably as it is shown that the holder of the shares never applied to have them transferred and that the plaintiff never made any attempt to

produce any such evidence as the directors were clearly entitled to insist or to substantiate his claim to have them transferred to his name. The

directors in refusing to do anything in the absence of suet evidence without an indemnity bond from the, plaintiff must be held to have acted

reasonably and with a proper regard for the interests of the company. The decision of the District Judge is, in our opinion, right and this appeal

must be dismissed with costs.