(1984) 07 CAL CK 0038

In the Calcutta High Court

Case No : A.F.O.D. No. 55 of 1983

Sheila Devi Chamria APPELLANT

Vs

Tara Chand Saraogi and Others RESPONDENT

Date of Decision : 19-07-1984

Acts Referred:
Companies Act, 1956 — Section 108

Citation : (1986) 60 CompCas 735 : (1987) 163 ITR 406

Hon'ble Judges : Suhas Chandra Sen, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : S.B. Mukherjee and J.K. Mitra, for the Appellant;

Final Decision : Allowed

Judgement

Suhas Chandra Sen, J.—This is an appeal from a judgment dated August 17, 1982. The facts of this case are a little unusual. A suit was filed by Smt. Sheila Devi Chamaria against Bajranglal Khemka, Tarachand Saraogi, Ram Kumar Sakseria, Sundarlal Nahata, Suganchand Saraogi, Champalal Jain, Smt. Gomti Sethani, Smt. Sabitri Dhandhania, Bijoy Kumar Dhandhania and East India Film Co. Pvt. Ltd., a company incorporated under the Companies Act, for declaration that the plaintiff was the owner of 900 equity shares of East India Film Co. Pvt. Ltd. and for a decree directing rectification of the share register of the company by inserting the plaintiff''s name in respect of those shares. After the suit was instituted, a written statement was filed on behalf of the defendants. It appears that there were protracted litigation between the parties in other proceedings. But ultimately when this suit came up for hearing, the defendants chose not to contest the suit. The propounders of the will of Motilal Chamaria, defendants Nos. 1 and 2, were dead at the time the suit was taken up for hearing. The advocate-on-record on behalf of defendants Nos. 3, 4, 5 and 6 stated in court that he had no instructions in the matter and took leave to retire from the suit. Nobody appeared on behalf of defendants Nos. 7, 9 and 10. Mr. P.L. Kedia appeared on behalf of defendant No. 8 and submitted that he had no instructions in the matter.

2. Under these circumstances, the case was taken up for hearing without any contest. Evidence was given in this case by the plaintiff and also by one Indrajit Raikhy, an employee of Swastika Construction Firm. It has been stated in the plaint by the plaintiff that she married Motilal Chamaria on April 5, 1953, according to Hindu rites. Motilal was the beneficial owner of the entire issued share capital of East India Film Company Private Limited. Out of 900 shares issued by the company, 875 shares were held by Motilal in his own name : 10 shares each stood in the names of Harilal Banerjee and Tarachand Saraogi and 5 shares stood in the name of Champa Lal Jain. It is the case of the plaintiff that Harilal Banerjee, Tarachand Saraogi and Champalal Jain were mere benamidars of Motilal. It is the further case of the plaintiff that Motilal made a gift of the said 900 shares to the plaintiff. The share certificates were handed over to the plaintiff along with a blank transfer form duly signed by Motilal. It was agreed between Motilal and the company that the shares would be transferred to the name of the plaintiff in the books of the company after the death of Motilal; but the entire dividend had to be paid to the plaintiff and the dividend was accordingly paid to the plaintiff on the 900 shares even during the lifetime of Motilal. This arrangement was confirmed by a writing on or about January 8, 1961, and that writing is set out in annexure " A " to the plaint. Motilal Chamaria died intestate on June 22, 1967. The plaintiff''s case is that after the death of Motilal, the company has not rectified the share register by inserting the name of the plaintiff as the holder of the said 900 shares nor has the company returned the share scrips to the plaintiff. The plaintiff prayed for declaration that she was the owner of the said 900 equity shares of the defendant company as well as a direction for rectification of the share register.

3. The plaintiff stated in her deposition that Motilal during his lifetime held 875 shares in the company in his own name; but the other 25 shares which stood in the name of his employees also belonged to him. The consideration money for the shares was paid by Motilal and the benamidars did not get any dividend at all. The plaintiff also stated that at the beginning of January, 1961, Motilal handed over the share scrips to the plaintiff as well as the transfer deeds in the presence of Sushil Kumar Haldar and Mr. Raikhy. Motilal told the plaintiff that she was the actual owner of the shares. She also stated that the document dated January 8, 1961, was executed pursuant to the gift that was made and she enjoyed the dividends from the shares from that date onwards.

4. Mr. Raikhy in his evidence has corroborated the evidence given by the plaintiff and he has specifically stated that he was present at the time the shares were gifted to the plaintiff. He also stated that 900 share scrips along with blank transfer deeds duly signed by Motilal were handed over to the plaintiff.

5. The learned trial judge held :

1. There was no evidence that any application was made to the company for

transfer of the shares or that the company refused to transfer the shares;

2. The plaintiff failed to prove that the share scrips were in fact in her possession or that she had taken any steps for transfer of the shares;

3. The document dated January 8, 1961, only indicated that Motilal Chamaria undertook to give the plaintiff the entire amount of dividends and there was a mere direction that those shares would be transferred to her as one of his heirs after his death.

6. We are of the view that the appellant is entitled to succeed in this case. The plaintiff has amply proved that the said 900 shares were handed over to her along with a duly attested blank transfer form by her husband Motilal in January, 1961. She has stated that all the dividends on 900 shares thereafter were paid to her. The gift was complete as soon as the share scrips along with the transfer deed were given to the plaintiff although the transfer was not recorded in the books of the company. There cannot be any doubt that the ownership of the shares passed to the appellant when the shares were handed over to her along with the blank transfer form duly signed by Motilal. It was held by the Supreme Court in the case of Vasudev Ramchandra Shelat Vs. Pranlal Jayanand Thakar and Others, that the donation of the right to get share certificates made out in the name of the donee became irrevocable by registration as well as by delivery. It was further observed by the Supreme Court at page 52:

" The donation of such a right, as a form of property, was shown to be complete so that nothing was left to be done so far as the vesting of such a right in the donee is concerned. The actual transfers in the registers of the companies concerned were to constitute mere enforcements of this right. They were necessary to enable the donee to exercise the rights of the shareholder. The mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated."

7. In the light of the observation made by the Supreme Court, it must be held that the gift of the shares was complete as soon as the shares were handed over to the plaintiff along with the blank transfer form duly signed by Motilal. The non-recording of the transfer in the books of the company did not invalidate the gift in any way. Although the plaintiff would not be regarded as a shareholder by the company until the transfer was recorded in the books of the company, none the less, in the eye of law, it was the plaintiff who was the owner of the shares and the gift was completed by the delivery of the share certificates along with the blank transfer form duly signed by the transferor. The plaintiff has acquired a complete legal right to have the shares registered in her name. The deed of gift dated Januarys, 1961, recites;

" That out of natural love and affection for my wife, Smt. Sheila Devi, whom I married on April 5, 1953, I undertake to give to her the entire amount of dividend which will be declared by the East India Film Company (P) Ltd., 68, Cotton Street, Calcutta, from year to year henceforward, i.e., from January 1, 1961, in respect of all shares owned by me in my name and in benami names of others in cash irrespective of Income Tax deductions. That after my death the shares mentioned above should be transferred in her name as one of my heirs, irrespective of any future disposition of my properties by me."

8. In my judgment, the deed of gift does not go, in any way, against the case made out by the plaintiff. It supports the contention of the plaintiff that she used to get the entire amount of the dividend declared by the company. The direction for transferring the shares in the name of the plaintiff does not militate against the case made out by the plaintiff. The shares were handed over to the plaintiff along with blank transfer forms duly signed by Motilal. The shares were not registered in the name of the plaintiff during the lifetime of Motilal. The actual registration of the transfer had to be effected after the death of Motilal.

9. Assuming that there is any conflict between the gift that was made and the deed that was executed on January 8, 1961, that conflict must be resolved in favour of the plaintiff. If the plaintiff''s case is true, and it must be taken to be true in the absence of any dispute raised by anybody, the shares along with the transfer deed signed by Motilal were handed over to the plaintiff. Motilal did all that he could do to make the gift complete. The only step that was left out was registration of the transfer. It has to be remembered that what a company registers u/s 108 is " a transfer of shares ". In other words, the transfer must precede registration.'' It may have been the wish of Motiial that the transfer will not be registered in the name of the plaintiff during his lifetime, but that will not prevent the transfer from being valid and effective.

10. The learned trial judge placed reliance on the case of Amarendra Krishna Dutt and Others Vs. Monimunjary Debl, . But the correctness of that decision was doubted by the Supreme Court in the case of Vasudev Ramchandra Shelat Vs. Pranlal Jayanand Thakar and Others, . The Supreme Court observed that the Calcutta High Court''s view was " in conflict with the law declared in the cases cited by the appellant which we approve."

11. The point of time at which the plaintiff lodged the share certificates with the company is quite immaterial. The plaintiff has proved that Motiial was the owner of all the shares ; 875 shares were held in his name and the other shares were held in the names of his benamidars. It has been proved that the shares were transferred to the plaintiff by handing over the scrips to her along with blank transfer form duly signed by the transferor. There is no reason why the company shall not register the transfer of shares. The company which is a party to this proceeding has not contested this suit. Nobody on behalf of the defendants has contested the claim of the plaintiff. In these circumstances, there is no reason to deny the claim of the petitioner for registration of the shares in the books of the company in her name.

12. In view of the above, the appeal is allowed. The judgment and decree passed on August 17, 1982, is set aside.

13. There will be a decree declaring that the plaintiff is the owner of the 900 equity shares of East India Film Co. P. Ltd. described in the plaint.

14. There will also be a decree directing rectification of the share register and/or register of members of East India Film Co. P. Ltd. by inserting the name of the plaintiff and/or her nominee in respect of the said shares.

15. There will also be a mandatory injunction directing East India Film Co. P. Ltd. to deliver to the plaintiff the shares scrips and/or certificates in respect of the said 900 shares after rectification of the share register. In default, East India Film Co. P. Ltd. is directed to issue duplicate share scrips in respect of the aforesaid 905 shares of the company to the plaintiff in accordance with law.

16. There will be no order as to costs.

Dipak Kumar Sen, J.

17. I agree.

