

(1952) 10 MAD CK 0007

In the Madras High Court

Case No : Original Side Appeal No. 66 of 1952

S.V. Ganapathy and Others

APPELLANT

Vs

Tiffin's Barytes, Asbestos and Paints Ltd. and Others

RESPONDENT

Date of Decision : 16-10-1952

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1877 — Section 45

Citation : AIR 1953 Mad 556 : (1953) 23 CompCas 66 : (1953) 66 LW 206 : (1953) 1 MLJ 484

Hon'ble Judges : Rajamannar, C.J;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : G. Vasantha Pai, for the Appellant; K. Rajah Iyer, O. Radhakrishna and P.C. Parthasarathy Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—This appeal arises out of an application for mandamus, Appln. No. 1471 of 1951 filed by the appellants u/s 45,

Specific Relief Act. The first respondent is a company called "The Tiffin's Barytes Asbestos and Paints Ltd.

2. The third respondents company are the managing agents and the second respondent is the manager of the third respondent and ex-officio

director of the first respondent company, At an annual meeting of the company held on 26-2-1951 the appellants were duly elected directors. This

application, Appln. No. 1471 of 1951, was filed by them as such directors for an order directing the respondents to deliver to them all the records,

documents, vouchers and other properties of the company in their possession. The respondent contested the application on the ground that the

managing agents (respondents three) appointed under the articles of association

had not been validly removed from their office and that, therefore, they were the persons entitled to be in possession of the documents and of the properties of the company. It was also contended that Section 45.

Specific Relief Act, would be inapplicable as the rights sought to be enforced in the application were not of a public character. Mr. Krishnaswami

Nayudu J. upheld these contentions and dismissed the application and this appeal is directed against that order.

3. We agree with Mr. Krishnaswami Nayudu J. that the application for mandamus was misconceived and that the proper remedy of the appellants

was by way of a suit. Section 45, Specific Relief Act, in so far as it is material for this case, is as follows :

Any of the High Courts of Judicature at (Calcutta, Madras and Bombay) may make an order requiring any specific act to be done or forbore

within the local limits of its ordinary original civil jurisdiction, by any person holding a public office whether of a permanent or a temporary nature,

or by any corporation or inferior Court of judicature provided:

(b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public

character or on such corporation in its corporate character; and

(d) that the applicant has no other specific and adequate legal remedy.

The question whether the third respondent company have been validly removed from their office as managing agents is in controversy between the

parties. If they have been validly removed, as is contended by the appellants, then their possession of the documents and all the properties of the

company would be without any title and all the properties of the company would be without any title and unlawful. There can then be no question

of their being (sic) directed to do or forbear from doing anything in their public character. The appropriate remedy of the appellants would in that

case be to institute a suit against them as trespassers to recover possession of the properties. An application for mandamus would be barred both

under provisos (b) and (d) to Section 45, Specific Relief Act. In the alternative if the third respondents company are validly in office then Article 71

which vests the management of the company in them, entitled them to maintain the possession of the documents and of the properties and the only

right which the directors, possess is under Article 77 to have inspection of them

at all times. The articles do not provide for the directors

themselves maintaining accounts , at least when there are managing agents. The application for mandamus should in this alternative fail on the merits.

4. The learned advocate for the appellants referred us to the decision - "In re the Albert Mills Co. Ltd., Nasarvanji v. Shivji Manikbhai", 9 Bom

HCR 438 (A). There it was observed that when the directors of a joint stock company who are duly elected are prevented from exercising their

rights or prevented from exercising their functions by the company acting through its other directors then a mandamus can be issued against the

company as there was no other remedy. But in this case though the first respondent is the company, effective relief is prayed against respondents 2

and 3 in their individual character and it is also indisputable that there is another remedy open to the appellants for the enforcement of their rights.

Reliance was also placed on the decision in - "Bank of Bombay v. Suleman Somji", 32 Bom 466 (PC) (B) where in an action by a shareholder

claiming a right to inspect the register of shareholders and make extracts there from, the Privy Council observed that the principles applicable

would be those regulating an application for a writ of mandamus and that it was incumbent on the applicant to show clearly that he has ""a specific

legal right to enforce which he asks for interference of the Court."" We do not see how this decision advances the case of the appellants. If the third

respondent company are treated as still validly in office then the only specific right which the applicants can enforce is under Article 77 for

inspection of the documents if that is refused. That, however, is not what the applicants want and indeed the respondents have offered to give

inspection of the documents. We do not find any valid ground for interfering with the order of Krishnaswami Nayudu J. The remedy of the

appellants is by way of an independent suit. We do not express any opinion on the merits of the points in dispute. This appeal is accordingly

dismissed but in the circumstances without costs.