
(1927) 11 MAD CK 0006
In the Madras High Court

T.A.K. Mohideen Pichai Taraganar

APPELLANT

Vs

Tinnevely Mills Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-11-1927

Acts Referred:

Companies Act, 1956 — Section 38

Citation : AIR 1928 Mad 571 : (1928) 28 LW 932

Hon'ble Judges : Srinivasa Ayyangar, J;Srinivasa Aiyanger, J;Ananthakrishna Ayyar, J;Ananthakrishna Aiyar, J

Bench : Full Bench

Judgement

Srinivasa Ayyangar, J.—Of considerable difficulty is the question raised and discussed in these appeals. It relates to the claim of the plaintiff-

appellant to require the first defendant company, a company registered under the Companies Act to register in his name certain shares purchased

by him at a sale held by Court in execution of a decree and subsequently confirmed.

2. We must take it for the purpose of these appeals that the company has refused to register and the first question that arises for determination in

that connexion is whether the plaintiff is entitled to seek to enforce his rights by suit. The contention of the learned vakil for the respondents with

regard to this matter was that the Indian Companies Act is really in the form of a complete code dealing with all the matters relating to companies

and that, therefore, if such enactment has provided a special remedy for the claim in question, then it is open to the aggrieved party to seek to

enforce the remedy only by such procedure and not by separate suit. The principle would undoubtedly appear to be that if the new enactment is

such that certain new rights Unknown previously to law are created by the now

statute and certain remedies are provided for the infringement of such rights, it must logically follow that it was the clear intention of the legislature that such remedies should be enforced only in the manner and by following the procedure, indicated. No doubt it is open to the legislature even in other cases to take away any subsisting general right of suit and provide a special remedy instead, but it must be done by express provision and such a general right is incapable of being taken away merely by implication.

3. The argument of Mr. Alladi Krishna-swami Ayyar, the learned vakil for the respondents, with reference to this question was that Section 38, Companies Act, provides for an application for rectification of the register of shares whenever the name of any person is fraudulently or without sufficient cause entered in or omitted from the register. It does no doubt appear that the expression "omitted without sufficient cause" in this section has received a wide and liberal construction from some learned Judges both in India and England. At the same time, however, the observation is open to be made that the expression "omission" may be inapt to cover cases of refusal to register more especially when the legislature has been quite familiar with such use of the words in juxtaposition as "omit" or "refuse."

4. The contention of the respondents receives undoubtedly further support from the fact that provision is made in the proviso to that section for the Court directing an issue to be tried. In the case of *Manilal Brijlal Shah v. Gordhan Spinning and Manufacturing Co.* [1917] 41 Bom. 76, the relief claimed was much the same as in this case and in circumstances very similar, and a petition u/s 38, Companies Act, was apparently regarded as not only competent but proper. But there are, however, the observations in the case of *Ramesh Chandra Mitter v. Jogini Mohan Chatterjee* [1920] 47 Cal. 901, of Mukerjee, J., to the effect that it is now well settled that, although persons are not entitled to an order *ex debito justicie* the jurisdiction u/s 38 is unlimited with a discretion in the Court in the circumstances of each case. That learned Judge goes on to observe that in a simple case where an immediate rectification is essential, it may be desirable to apply under that section; but if the case is at all complicated, an action should be brought.

5. I respectfully agree entirely with those observations. If the principle is that the

provisions contained in and the procedure-prescribed by a certain enactment are exhaustive and it should be open to parties to seek for such reliefs in regular actions only in cases where the enactment can be said to create entirely a new sphere of rights and obligations, it becomes important to discuss the question in this case whether the Indian Companies Act, must, having regard to its true nature, be regarded as an Act creating such a new sphere or as merely legislating for or regulating certain rights recognized under the common law. It seems to me that the true and correct view would be to regard it only as of the latter kind.

6. By the terms of Section 4 the Act declares as illegal any association or partnership consisting of more than ten persons-formed for the business of banking and any company, association or partnership of more than twenty persons formed for the. purpose of carrying on any other business. It is clear that the scope of the Act is. regulative and it is concerned only with making provisions in respect of rights and obligations which would have existed apart from the Act. In all such cases the true principle is that though remedies are provided in the enactment, the general right of suit cannot be considered as taken away merely by reason of such provision and except by express enactment. The objection, therefore, that the appellant-plaintiff had no right of suit must be overruled.

7. Apart from this objection of a preliminary nature, two contentions were advanced on behalf of the respondent to. show that the plaintiff was not entitled to the relief prayed for, to an order for the registration of the shares. But before dealing with those objections it may be useful to see how Mr. Varadachari, the learned vakil for the appellant, put forward his case. Such shares in a company, although the company may be registered under the Act, are, in the eye of the law, merely shares in a partnership. No doubt the legal interest is evidenced by a document, the share certificate. Such an interest, therefore, is property in the eye of the law and is transferable. Rules 79 and 80 of Order 21, Civil P.C., clearly indicate that such shares can be the subject of Court sale and delivery of possession. It, therefore, follows that on such transfer of shares being legally effected, the obligation lies on the company to register the shares in the name of transferee unless the company can successfully point to some provision in the Memorandum or Articles of Association which has the

effect of denying such rights to the transferee or giving the right to the company to refuse to register the shares either in their discretion or in certain given circumstances.

8. The learned vakil for the appellant referred in support of this contention to "" Weston's case,-In re Smith, Knight and Co."" [1869] 4 Ch. 20. Sir

W. Page Wood, L. J., says in that case as follows:

I was, therefore, greatly surprised at the argument which has been addressed to us today, namely, that unless there is something in the articles

which makes the shares transferable, they are not transferable at all, except by a resolution of a general meeting. I apprehend the shares are

transferable by virtue of statute, and that the province of the articles is to point out the mode in which they shall be transferred and the limitations (if

any) to which a shareholder shall be subjected before he can transfer.

9. Again, at p. 28, that Lord Justice observes as follows:

It would be a very serious thing for the shareholders in one of these companies to be told that their shares the whole value of which consists in their

being marketable and passing freely from hand to hand, are to be subject to a clause of restriction which they do not find in the articles. And I may

add that if we were to hold that such powers were vested in the directors it would be a very serious thing for them, and would impose upon them

much more onerous duties than any which are really imposed upon them by this clause.

10. The Court of appeal in that case held that the directors of a company have no discretionary power, independently of powers expressly given to

them by the Articles of Association, to refuse to register a transfer which has been made bona fide.

11. The decision of Kumaraswami Sastriar, and Devadoss, JJ., in the case of Naghabushanam v. Ramachandra Rao AIR 1923 Mad. 241 really

proceeded on thus same basis and is a clear authority for the proposition that in the absence of anything in the Articles of Association forbidding

the same a sale by Court of shares held by a member has the effect of transferring the shares to the purchaser. The argument, therefore, of Mr.

Varadachariar is correct, that, if the contention should be that on a sale by the Court the shares do not pass to the purchaser, the burden is on

those who put forward such contention to establish the same by reference to

some provision in the Memorandum or Articles of Association of the company.

12. As already observed, the contention of Mr. Alladi Krishnaswami Ayyar, with regard to this matter, was twofold: the first was that on a sale by the Court, what takes place is a mere, transfer of the shares and that under Article 20 it is provided that the shares in the company shall be transferred by endorsement on the certificate in such form as shall from time to time be approved by the managers, that Article 23 provides that the company may, without assigning any reason therefor decline to register any transfer of shares and that Clause (c) of Article 26 also gives the company the power by a resolution passed at the general meeting to decline to register any transfer without assigning or being bound to assign any reason for such refusal. In view of the principles relating to the transfer of shares already adverted to, it follows that, if a sale by a Court of law is a transfer of a share within the meaning of the Articles of Association as contended for by the respondents, it must be held that there has been no such transfer and that the defendant company would be entitled to refuse to register.

13. To begin with: it must be pointed out that the expression "" transfer "" by itself is not altogether appropriate to indicate a sale in invitum by the Court. No doubt the expression "" transfer "" has been used in such collocations as "" transfers by operation of law,"" but at the same time the expression "" transfer "" is undoubtedly more appropriate to indicate what is effected or brought about by the will of the person in whom the property is vested, as in the Transfer of Property Act.

14. Apart from that, the Articles of Association beginning with 28 are headed as ""shares transmission"" as contrasted with ""shares transfer"" which is the heading given to Articles 19 to 27. The expression "" transmission "" is undoubtedly more appropriate than the word ""transfer"" for indicating assignments effected by some agency other than the transferrer, and one has only to look at the terms and provisions of Articles 28 to 30 to find out that such is really the case. Articles 19 to 27 obviously deal only with transfers of shares by the shareholders and 28 to 30 with assignments brought about by other agencies. Having regard to this contradiction, not only indicated but laid down by the Articles, it is impossible to accept the

contention that the assignment resulting on the sale by the Court should be regarded as falling under the expression "" transfer of shares "" in the

Articles of Association. Articles 20 to 27, therefore, have no bearing whatever on the point. If none of the said Articles apply, it follows that no

provision therein contained with regard to the discretion of the company to register the shares is available as a ground of refusal in the case under

consideration. It follows also that no other formalities required by any of the said articles can be insisted on.

15. The next argument of the learned vakil for the respondents, and in fact the argument that gave me trouble, was the one based on Article 28.

That article is the first under the heading of "" shares transmission."" Mr. Alladi Krishnaswami Ayyar contended that as that article applied to cases of

transmission of shares and as it is provided in that article that the executors or administrators of a deceased member shall be the only members

recognized by the company as having any title to the shares of such member, the plaintiff was not entitled to require the company to register the

shares in his name unless and until he produces letters of administration to the estate of the deceased or establishes his rights as executor of the last

will and testament of the deceased member.

16. Mr. Varadachariar at one stage put forward the contention that Article 29 provided for the case of any person becoming entitled to shares in

any other way than by transfer and that, therefore, the plaintiff, as being a person who claimed to have become entitled to the shares other than

by a transfer inter vivos was a person clearly entitled to have his name registered on furnishing satisfactory evidence of his title. But Article 29, as

was pointed out by Mr. Alladi Krishnaswami Iyer, indicates merely the procedure to be followed in certain cases and that cannot be construed as

overriding another and previous article, namely Article 28.

17. Stated in brief, the contention of defendant-respondent 1 with regard to this aspect of the case was as follows; Article 28 makes a provision in

respect of shares registered in the company in the name of a person who is since deceased. That is this case. Therefore, the shares in question are

the shares of such member, that is to say, the shares of a deceased member; and, therefore, in respect of the shares of a deceased member Article

28 provides that executors and administrators of a deceased member shall be

the only persons recognized by the company as having any title to such shares.

18. At first sight I was myself inclined to think that there was considerable force in such an argument, especially having regard to the very curious wording of Article 28.

19. I, however, felt impelled to examine the wording of the article more carefully because it appeared to me that the contention, if accepted, would

lead frequently to absurd and even monstrous results. My disinclination to accept the contention without further examination was strengthened

when I found that the terms of Article 23 are really copied from the general articles as set out in the schedule to the Companies Act itself, which

again are taken almost verbatim from the forms in the English Act.

20. I may pause here and refer to what I have alluded to as to the absurd and monstrous results that would follow on such a contention and wide

construction of the article being upheld. Such a wide construction as that contended for, would apply the article to all cases of shares found

registered in the names of persons deceased at the time when the question arises. Supposing the shareholder transfers the shares in his lifetime and

even delivers them over to his transferee, but the transferee does not get his name registered and in the meantime the original shareholder dies, then

according to the wide construction contended for there is no reason why such transferee should not be required, having regard to the terms of the

article, to establish his title as executor or administrator of the deceased. Again even if the original registered shareholder should become an

insolvent, and his shares vested in the Official Assignee and the insolvent shareholder should die thereafter, this article would prevent the Official

Assignee from successfully claiming any title in respect of the shares. Again if a sale of the shares by the Court should take place during the lifetime

of the shareholder himself, and the shareholder should die thereafter, but before the transferee is registered the same result may follow. It is difficult

to believe that the legislature itself by framing a provision in that way intended to produce such absurd results. It was on these considerations I was

prompted to examine more carefully into the wording of that article.

21. There are three matters to be considered with regard to the provision in Article 28. It first states that no one shall be recognized, and the

provision is "" as having any title to the shares of a deceased member "" and the concluding direction is "" other than his executor or administrator."" As

the rule speaks of a deceased member and as the rule is clearly inapplicable to a case where somebody's name has been substituted as the

shareholder in the place of the deceased member, it follows that the rule is applicable only to a stage at which the registered member is dead and

no one has been substituted as member in his place in the register. The expression "" shares of a deceased member "" would not properly be

applicable to a case where the name of somebody else has already been substituted. Two constructions of this article seem to me to be possible,

one a very wide construction and the other a comparatively narrow one. The wider construction would be to refuse to recognize any person as

having any title to any shares if it should only happen that the shares stand registered in the company in the name of a deceased person. The narrow

construction would be that the rule prevents only the recognition by the company as the legal representatives of a deceased member of any person

other than the executor or administrator of the deceased member.

22. The contention of Mr. Alladi Krishna-swami Iyer was undoubtedly for the adoption of the wider construction. If that contention should be

accepted it would no doubt follow in this case that the plaintiff should be excluded by the rule. The question then is, which of the two constructions

is correct and proper. Article 30 in the company's articles of association recognizes that even before the executor or administrator registers him

self, he may validly transfer the shares held by the deceased to some other person and that other person may properly register himself, because

there is a provision that in the absence of such registration the company will have the authority to sell and dispose of the shares. Having "regard to

the terms of Articles 28, 29 and 30, it would seem to follow that an executor or administrator can only do one of two things, either register himself

as a member or else if he does not wish to register himself, to transfer the shares to the other persons. Such a transfer is recognized as valid. If such

a transferee should apply to be registered then the implication in the rules seems to be clear that he will be entitled to have his name so registered.

But if the expression "" shares of a deceased member "" should be read as meaning shares standing in the register in the name of a member since

deceased, then literally construed it would follow that if the person who applies to be registered in respect of such shares is not the executor or

administrator, but only some transferee from him, then the applicant for transfer cannot be recognized by the company, because the only person

under the rule that can be recognized is the executor or the administrator.

23. But such could not possibly have been the intention of the article; it is, therefore, necessary to examine the language of the article further to

arrive at the proper construction thereof. The word used in the article is "" recognized."" Recognized for what purpose is the question. The article

speaks of persons being recognized as having any title to the shares of a deceased member. Any title to the shares of a deceased member can only

be on the footing that the deceased member had the property in the shares at his death, as otherwise they could not be the shares of a deceased

member. A title to the said shares can be set up on the ground of a person having succeeded thereto on the death of the deceased member,

succeeded either on intestacy or under his will. Therefore it is clear that when the article speaks of persons claiming title to the shares of a

deceased member it could be referring to persons who claim to have succeeded to the shares on the death of a deceased member. It is for this

purpose that the article provides that in the case of persons claiming to have succeeded to the shares of a member on his death the only persons

recognized by the company shall be executors or administrators. Undoubtedly the executor and the administrator are persons who claim title on the

ground of the interest and property of the deceased member having become vested in them. It follows from this that the intention of the rule was

clearly to provide for only the executors and administrators being recognized among the persons that may claim to have succeeded to the shares of

a deceased member at his death.

24. From this it, therefore, naturally and necessarily follows that if the question is not of having acquired the right to the shares on the death of a

deceased member and if the question is not one of succession to the deceased member, then the rule has no application. No doubt when the rule

speaks of being recognized, it must be for all purposes appropriate to the particular stage and as that stage obviously is after the death of the

deceased member and before the name of some as member is substituted in the

register, it follows that for all such purposes as receiving dividends, paying calls, right to get registered, right to transfer and so on, the only persons recognized as persons entitled to the shares in succession to the deceased member should be the executors or administrators. Such a clause would undoubtedly exclude a mere heir-at-law without letters of administration, a person claiming as surviving coparcener, a legatee of the shares and so on. Thus the rule has application only for the determination of the question who should be recognized as the legal representatives of the deceased member? But, however, when the claim is not as a legal representative and is not on the ground of having succeeded to the shares on the death of a deceased member, the rule cannot possibly apply. As already pointed out, any other construction of the article, especially such a construction as has been contended for on behalf of the respondent company would lead to many absurd and altogether unexpected results. Many further instances of such absurd and unexpected results could be multiplied but I shall refer only to two more.

25. Let us suppose that the deceased member during his lifetime duly assigned and endorsed the shares and delivered them over to a transferee of his. Then, can it be contended that simply because the transferor died, and therefore the shares may in one sense be said to be the shares of a deceased member, the transferee of the shares should either obtain letters of administration to the estate of the deceased, or get probate or else must forgo the shares and lose them? It is also difficult to understand how such an endorsee or transferee can either get probate or letters of administration.

26. Let us take again the case of a receiver appointed by the Court in respect of the shares. If the member in whose name the shares stood should die, and the article should be construed in the manner contended for, it must follow that the receiver cannot get himself recognized as entitled to deal with the shares or get even any dividends payable in respect thereof. It seems to me that there is no obligation on a Court of law so" to construe a clause as would lead to a clear absurdity which could not possibly be regarded as contemplated by the legislating authority or agency. On the other hand, that construction alone should be adopted which is in consonance with common-sense, which does not lead to absurd results

or; enormous practical difficulties.

27. In the present case there were three shares Nos. 207, 208 and 4738, held by the deceased P.O. Nallasivan Pillai in the first defendant

company which were duly sold by the Court in execution of a decree obtained against the estate of the said Nallasivan Pillai in the hands of his

legal representatives, and the plaintiff became the purchaser of the shares at the Court auction, obtained a sale certificate and also obtained delivery

order issued by the Court on 27th July 1920. It would thus be seen that the plaintiff's title in respect of the shares is not as the legal representative

of the deceased member and is not on the ground of having succeeded to the shares on the death of the deceased member. Therefore, the rule

about executors and administrators cannot possibly apply. If that article does not apply, the article that would apply is Article 29. It is as follows:

Any parent or guardian of any infant member, or any committee of a lunatic member, or any person becoming entitled to shares in consequence of

the death, bankruptcy, or liquidation of any member, or of the marriage of any female member, or in any other way than by transfer, shall upon

procuring such evidence that he sustains the character in respect of which he proposes to act under the clause, or of his title as the company thinks

sufficient, be forthwith entitled, subject to the provisions herein contained, to be registered as a member in respect of such shares, or may, subject

to the regulations as to transfers hereinafter contained, transfer the same to some other person.

28. This article, therefore, refers to the case of any person becoming entitled to shares in any other way than by transfer.

29. I have already referred to the distinction between transfer and transmission of shares. As the claim of the plaintiff is on the ground his having

purchased it at a Court sale, he does not claim by transfer, and as none of the other cases specifically provided for in Article 29 applies, it must be

regarded as a claim in any other way than by transfer. The provision in Article 29 with regard to it is that the person should procure such evidence

that he sustains the character in respect of which he proposes to act under the clause or of his title as the company thinks sufficient, and, if he does

so, he should forthwith be entitled to be regarded as a member in respect of such shares or may be entitled to transfer the shares himself in his turn.

Now, what is the proof of the title that a plaintiff in respect of a case as this should give? Undoubtedly only the sale certificate and the order for delivery. In the case of a sale by Court the sale certificate is the instrument by which the property is transmitted. There is no question on the correspondence in this case of the company not having regarded the proof of title as sufficient. The defence of the company in the suit is only to the effect that in the absence of an actual transfer of the shares either by the deceased or even by the Court the plaintiff can have no right to the shares and that in any case the first defendant company has a discretion to refuse to recognise any transfer of the share.

30. This last contention is based on Article 23 of the company which is as follows:

The company may, without assigning any reason therefor, decline to register any transfer of shares or to register any person as a member under

Clause 26 in respect of shares upon which the company has a lien by virtue of Clause 36 hereof.

31. There is also the Sub-clause (c) of Article 26 which is as follows:

The company may, by a resolution passed at a general meeting, decline to register any transfer without assigning or being bound to assign any reason for such refusal.

32. But all these provisions relate only to transfers of shares. Of course, if it is a question of mere transfer of shares, no doubt it may be required

that the transfer should be effected by endorsement on the share certificate as provided in Article 20 and after conforming to the provisions in the

other articles under the heading. But as there is in this case no question of the transfer of the shares and, as already shown, the claim of the plaintiff

is only on the ground of transmission of shares, there is no force or substance in all such contentions.

33. One other contention of the learned vakils for the respondents it would be convenient to refer to at this stage. It was argued that Rule 80, Order

21, Civil P.C. provides for a share in a company being transferred by a Judge and that, therefore, as in this case, the plaintiff has not obtained the

transfer to him of the shares duly executed by the Judge or other officer of the Court, until and unless that is done, the plaintiff cannot claim to have

become entitled to the shares. Rule 80 no doubt provides the procedure to be followed; but the opening words of that rule clearly show that it is

only where the execution of the document or the endorsement of a party in whose name the share is standing is required to transfer such share, the

procedure indicated need be followed. It is a rule which prescribes the procedure when what is required or when what is decreed or ordered is the

transfer of the share. It is not a rule which makes it obligatory that anything should be done. It is in a real sense only permissive, because the

expression used is ""that the Judge may"" and the whole rule is to the effect that if a particular result is desired, the procedure prescribed should be

followed. For instance, there may be a suit for specific performance of an agreement to sell certain shares in a company, and if the judgment-

debtor does not carry out the decree by transferring the shares himself, this rule prescribes the procedure to be followed.

34. Again this rule could apply only where the endorsement of the party is required to transfer the share; but if it is not a question of the transfer of

the share at all, that is to say, of the Court doing that which the party was bound to do, -then there can be no question of any endorsement by the

Judge being necessary. "In this connexion we may also consider the provisions of Rule 79 of the same order. In Clause 3 it is provided that where

the property sold is a share in a corporation the delivery thereof shall be made by a written order of the Court prohibiting the person in whose

name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of or making any

dividend thereon and the manager, secretary or other proper officer of the corporation from permitting such transfer or from making any such

payment to any person except the purchaser.

35. It is significant that this rule speaks of the issue of such a written prohibitory order as constituting the delivery of the shares. It is also significant

that under Clause 2, Rule 77 of the same order, on payment of the purchase money by the purchaser and the grant of a receipt thereof by the

person holding the auction it is provided that the sale shall become absolute. There is, therefore, no force in "this contention also.

36. I may in this connexion refer to the case of *Manilal Brijlal Shah v. The Gordhan Spinning and Manufacturing Co.* [1917] 41 Bom. 76, where

the learned Judges appear to have held that the purchaser of a share at a Court sale was in the same position as a transferee from a shareholder

and that, therefore, his right to have his name registered as a member was subject to the discretion given to the directors to refuse to register any transfers. It is possible " to doubt the correctness of that decision. Further having regard to the observations of Sir William Pagewood, J., referred to above the very point of view from which the question was considered by the learned Judges would appear to be open to question. But for the purposes of the present case it is sufficient to observe that it does not appear that there was in the Articles of Association of the company in that case any such contradistinction between transfer and transmission of shares as there is in the articles before us.

37. In the case of *Naghabushanam v. Ramachandra Rao* AIR 1923 Mad. 241 Kumaraswami Sastri, J., in delivering the leading judgment observes that in the case of sales by Court where the sale is confirmed and the order is issued under Sub-clause 3, Rule 79, Order 21, Civil P.C., no further steps are required to be taken. No doubt in that case the learned Judge appears to have been of the opinion that there might still be a discretion in the company to signify or withhold its assent to the registration of the purchaser in the company's books. But there no question arose with regard to it and any observation, therefore, of the learned Judge with regard to that matter must be regarded as mere obiter dictum.

38. Further, it does not appear from the report of the case whether the Articles of Association of the company in question were at all similar to the Articles of Association with which we are concerned in this case.

39. In the result, therefore, it is clear that so far as the Procedure Code is concerned the plaintiff purchaser has completed his title to the shares and that so far as the company is concerned the plaintiff's title not being based on a transfer by or from a shareholder and being in its nature a transmission of shares in the language adopted in the Articles of Association the rules as to the discretion of directors or of the general body of shareholders to refuse to register cannot possibly apply.

40. Further, the plaintiff's title not being one on the footing of succession to the deceased member the provision as to the executors and administrators alone being recognized has no application.

41. Both the lower Courts were, therefore, clearly wrong in the view taken by them on both the points.

42. The appeals, therefore, must be allowed and the decree of both the lower Courts dismissing the plaintiff's action must be set aside. Instead

there will be a decree in favour of the plaintiffs declaring their right to the respective shares in question and directing the first defendant company to

register the shares in the names of the plaintiffs. There should also be decrees in favour of the plaintiffs for the dividends in respect of the shares.

The lower Courts have not ascertained the amounts of the dividends payable. If the parties are unable to agree as to this the matter will have to be

remanded to the Court of first instance for the purpose of ascertaining and decreeing the same. The costs of the plaintiffs-appellants throughout will

be paid by the respondents.

43. The memoranda of objections were not pressed and are dismissed with costs.

Ananthakrishna Ayyar, J.

44. The main question for decision in these cases is whether the plaintiffs are entitled to have the three shares registered in the name of the late

Nallasivan Pillai (father of defendants 2, 3 and 4) in the Tinnevely Mills Co. Ltd., (defendant 1) transferred and registered in their names in the

books of the company.

45. Nallasivan Pillai owed money to Swami Iyer and others. On Nallasivam Pillai's death, the creditors instituted suits against defendants 2, 3 and

4, the undivided sons of Nallasivam Pillai, and having obtained decrees, the decree-holders brought to sale through Court the three shares held by

Nallasivam Pillai, and Mohideen Pichai Tharaganar purchased them in Court auction and got delivery of the shares in the manner provided by

Order 21, Rule 79, Civil P.C. On the strength of the Court sale certificate and delivery, Mr. M. P. Tharaganar the auction purchaser applied to the

company for the grant to him of a share certificate for the three shares, and enclosed with the application the Court sale certificate. When the

correspondence between the auction purchaser and the company was going on, defendant 2, the eldest son of Nallasivam Pillai, sent a notice to

the company intimating that he intended to take steps to have the decree obtained by the creditors set aside and requesting the company not to

recognize the auction-purchaser as owner, or pay any dividends to him, and warning the company that he would hold the company liable for the

loss that might accrue to him. The company accordingly informed the auction

purchaser of the threatened troubles, stating that no further action in the matter could be taken before the claim of the sons of Nallasivam Pallai was settled. The auction-purchaser transferred one of the three shares to K. A. Sivagnanam Pillai. Two suits were instituted in the Court of the District Munsif of Ambasamudram O.S. 60 of 1923 by the auction purchaser Mohideen Pichai Tharaganar in respect of two shares, and O.S. 61 of 1923 by Sivagnanam Pillai in respect of one share, the prayers in each suit being for a declaration, that the plaintiff was entitled to have the shares transferred to him and defendant 1 directed to transfer the shares in the name of the plaintiff for the payment of past dividends, and also further dividends, as and when they accrue, and for grant of other appropriate relief. The company, defendant 1, pleaded inter alia that the plaintiffs had not complied with the provisions of the Companies-Act in general and the Articles of Association in particular regarding transfer of shares, and consequently the plaintiffs were not entitled either to the registry of shares in their names or to the dividends appurtenant thereto. The company also stated that, in view of the provisions investing the directors with discretionary power to allow or refuse registry of transfer of shares, the plaintiffs were not entitled to the reliefs prayed for (para. 10 of the written statement) that the conduct of the plaintiff in instituting this, suit is not bona fide in that he has not proceeded: firstly, as required by law with an application under Order 21, Rule 80, against defendants 2, 3 and 4; secondly, as required by law with a regular suit against defendants 2, 3 and 4 for execution of a document of transfer; and thirdly, in that he has impleaded defendants 2, 3 and 4 only as pro forma defendants without claiming any reliefs against them: (Para. 11.)

46. Defendants 2, 3 and 4 contended that they were minors during the proceedings in suit No. 391 of 1919, instituted against them by the creditors of their father, that they were not properly represented by the head clerk of the Court who was appointed as their guardian ad litem, that the Court guardian was grossly and culpably negligent in not defending the suit properly and in not safeguarding the interests of the minors in execution proceedings, that the execution proceedings-were invalid, that the shares were sold for a low price, that the sale was irregular and that

the plaintiffs were not entitled to have the shares transferred in their names.

47. Having regard to the contentions raised by the defendants several issues were-framed. Issues 1 and 4, the most important of them, ran as follows:

(1) Whether the suit is not maintainable in law in view of the provisions of the Companies Act and the Articles of Association of this company and

also for the reasons given in paras. 10 and 11 of the written statement of defendant 1?

(4) Whether the decree and execution proceedings in O.S. 391 of 1919 are vitiated by misrepresentation and fraud and as such null and void for

all or any of the reasons stated in the written statement of defendants 2 to 4?

48. It may be convenient to dispose of the contentions put forward by defendants 2, 3 and 4 and raised by issue 4. Both the lower Courts agreed

in holding that the said defendants had not even alleged that they had a good defence to the suit, nor let in any evidence to support the plea of the

alleged gross negligence and fraud on the part of the Court guardian. They called no witnesses on their behalf and issue 4 was found against

defendants 2 to 4.

49. Both the lower Courts, however, dismissed the suits on three main grounds: (1) certain formalities had to be gone through by the purchaser, to

wit, the presentation of a transfer application accompanied with such monument of title which the manager might require; (2) the transfer had to be

approved by the company in a meeting of a Board of Directors and that the company had got the right to decline to register any transfer without

assigning or being bound to assign, any reason for such refusal; and (3) plaintiffs were not entitled to institute the suits without obtaining letters of

administration.

50. Before considering the above three grounds of decision on which the lower Courts dismissed the suit, it is necessary to notice another

contention put forward by the learned vakils for respondent 1 before us, namely, that the only remedy of the plaintiffs was to apply to the District

Court u/s 38, Companies Act, for rectification of the company's register, that the District Court alone had jurisdiction, and that the present suits

instituted in the District Munsif's Court were unsustainable. "The District Munsif overruled this contention, holding that

the mere fact that an enactment gave a summary remedy in certain cases would not constitute a bar to a regular suit. The case *Sree Mahant*

Kishore Dasee v. Coimbatore Spinning and Weaving Co. [1903] 26 Mad. 79 was a suit for rectification of the register. In *Rameshchandra Mitter*

v. Jogini Mohan Chatterjee [1920] 47 Cal. 901 their Lordships observed that if a case was complicated, an action should be brought.

51. The learned District Judge has not noticed this point in his judgment. I am clear that the District Munsif was right in his view regarding the

maintainability of the suits. In *Rameshchandra v. Jogini Mohan* [1920] 47 Cal. 901 it was held by Mookerjee and Fletcher, JJ., that in a simple

case where an immediate rectification is essential, it may be desirable to apply under the section, but if the case is at all complicated, an action

should be brought. In *Societe Generate De Paris v. Walker* [1886] 11 A.C. 20, Earl of Selbourne held that

a transfer might indeed give a legal right of action against the company if they, without just cause, refused to register it; it might also be a good

foundation for an application to the competent Court to rectify the register.

52. In Halsbury's Laws of England, Vol. 5, p, 154, Section 251, it is mentioned as follows:

If from its complexity or otherwise the Court thinks that any case could be more satisfactorily dealt with in an action, the Court without prejudice to

the applicant's right to institute an action for rectification will decline to make an order.

53. There is nothing in the Companies Act necessitating a contrary view. Thus it is clear that the transferee's remedy is not limited to making an

application to the District Court u/s 38, Companies Act, and that right of suit is open to him and that the present suits before the District Munsif

were maintainable, more especially as complicated questions are involved in the suits, and also because the contentions put forward by defendants

2 to 4 with reference to the validity of the decree and execution proceedings in O.S. 391 of 1919 have to be finally adjudicated in order to

ascertain the exact rights of the parties, which could be done only in a regular suit.

54. I now proceed to consider grounds 1 and 2 on which the lower Courts based their decision. The *Tinnevely Mills Co. Ltd.* is not a private

company as defined by Section 2, Clause 13, Companies Act 7, 1913. Prima facie shares of a member in a company are transferable like any

other moveable property. No doubt, it is open to the company to prescribe the manner in which and the restrictions subject to which such shares

could be transferred. The general right to transfer shares exists and the onus is on those who set up any limitations to the exercise of such right of

showing the existence of the restrictions relied on by them. The decision in Weston's case, *In re Smith Knight & Co*, [1869] 4 Ch. 20, is

instructive on the point. Lord Romilly, Master of the Rolls, refused the application of the transferee of certain shares to have the register rectified by

removing the transferrer's name and placing the transferee's name on the register. On appeal Sir W. Page Wood, L.J., and Sir Selwyn L.J.,

reversed the decision of the Master of the Rolls and directed the registers to be rectified and the transferee recognized as the owner of the shares.

In the course of the judgment it was observed at p. 27 as follows:

I apprehend the shares are transferable by virtue of the statute and that the province of the articles is to point out the mode in which they shall be

transferred and the limitations (if any) to which a shareholder shall be subjected before he can transfer. The only question then is: Is there anything

to restrain the exercise of this right of transfer in the present case.... I think...the shares are at once transferable under the statute unless something is

found to the contrary in the Articles of Association.

55. See also Lindlar's case: *In re Discoverers Finance Corporation Ltd.* [1910] 1 Ch. D. 312 (317). The Companies Act accordingly provides by

Section 28 that the shares in a company shall be transferable in manner provided by the articles of the company. u/s 21 of the Act the

Memorandum and Articles of Association of the company shall be considered as covenants entered into on the part of each member, his heirs and

legal representatives to observe all the provisions of the memorandum and of the articles subject to the provisions of the Act. To decide whether

the contentions raised by the company under headings 1 and 2 aforesaid are valid or not, one has to see what exactly are the provisions contained

in the Articles of Association of the company with reference to this matter. Turning to Ex. 1 (the Articles of Association of the company) we find

that rules Nos. 19 to 27 are under the heading "' Shares (transfer)'" and the

rules numbered 28 to 30 are under the heading ""Shares (transmission).

Thus Rules 20 to 23, on which the lower Courts relied come under the heading Transfer of Shares. It was argued on behalf of the plaintiffs that

Rules 20 to 23 apply only to the case of voluntary transfer by act inter vivos and not to Court purchasers as the present. Both the lower Courts

overruled this contention of the plaintiff, the lower appellate Court holding, that the plaintiff's contentions were concluded by the cases reported in

Manilal Brijlal v. Gordhan Spinning and Manufacturing Co. [1917] 41 Bom. 76 and Naghabushanam v. Ramachandra Rao AIR 1923 Mad. 241.

It seems to me that the lower Courts were wrong in not keeping the distinction between the transfer and transmission of shares, which are two quite

different matters. Transfer is by the voluntary act of parties, where-as transmission is by operation of law. The distinction is well pointed out in the)

case of In re Benthall and Spinning Mill Co. [1880] 11 Ch. D. 900. James, L. J., observed as follows:

In table A the word "" transmission"" is put, in, in contradistinction to the word"" transfer"" by the act of parties, the other means transmission by

devolution of law.

56. In the same case Jessel M. R. said under the title "" transfer of shares"", we find a different set of rules from those found under the title

transmission of shares.... Now there is neither a transfer in this case nor a transfer by a member for the member's own benefit; he did not transfer

but the operation of the bankruptcy laws and table A gave a right to the trustee to call upon the company to admit $\frac{1}{2}$ him as a member.

57. Therefore Rules 20 to 23 and the other rules under the heading "" Transfer"" do not apply to the present case which is a case of Court sale. The

decision in Manilal Brijlal v. Gordhan Spinning & Manufacturing Co. [1917] 41 Bom. 76 and Nagabhushanam v. Ramachandra Rao AIR 1923

Mad. 241 relied on by the lower Courts are not really against the view I am inclined to take. In the case reported in Manilal Brijlal v. Gordhan

Spinning & Manufacturing Co. [1917] 41 Bom. 76 it does not appear that there were two sets of rules: one for transfer and the other for

transmission of shares as we have here in the present case. The rules in the Bombay case evidently gave the company liberty; without showing, any

cause, to refuse to transfer any shares (to get them entered) in the names of

other persons. There being evidently in the Articles of Association of that company only one set of rules,, the Court held that the rules governed all cases of transfer; that is, transfer by operation of law also. The question in Nagabhushanam v. Ramachandra Rao AIR 1923 Mad. 241 was, which of two company purchasers had a better title to the shares, an auction purchaser of the shares or a transferee under a deed signed only by one of the parties where the rules required that transfer should be by deed executed by both the transferrer and the transferee. The company was not a party to the litigation and the observation of the learned Judge that there was a discretion in the Directors to recognize or not purchasers in execution of decrees was only obiter. Further it does not appear what exactly were the rules of that company about the transfer and transmission of shares. I, therefore, think that the lower Courts were not right in holding that Rules 20 to 23 apply to the present case.

58. It remains to consider the last of the grounds on which the lower Courts based their decision dismissing the suits, namely," the plaintiffs had not obtained letters of administration. The very first rule under the heading ""transmission"" of shares, namely, Rule 28, runs as follows:

The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to the shares of such member.

59. At first I thought that the lower Courts were right in their view about the necessity for letters of administration having regard to Rule 28, and I was inclined to agree with the contention of Mr. A. Krishnaswamy Ayyar, the learned vakil for the respondent 1, that otherwise companies would be put to the necessity of inquiring into validity of conflicting claims put forward by different claimants; but having given the matter further consideration, I have come to the conclusion that the lower Courts were wrong in this point also. Rules 29 and 30 also have to be read in this connexion. Rule 29 says:

any parent or guardian of any infant member or any committee of a lunatic member, or any person becoming entitled to shares in consequence of the death, bankruptcy...of...any member, or of the marriage of any female member, or in any other way than by transfer, shall upon procuring such evidence that he sustains the character in respect of which he proposes to act

under the clause, or of his title, as the company thinks sufficient, be forthwith entitled, subject to the provisions herein contained, to be registered, as a member in respect of such shares, or may, subject to the regulations as to transfers herein before contained, transfer the same to some other person.

60. In the first place it is only as long as the shares form part of the estate of the deceased that Rule 28 could be held to have operation. The

moment the shares have validly passed out of the estate of the deceased and are no longer part of the assets belonging to the estate the obligation

to take out letters of administration ceases. The estate has no further title to the said shares and consequently the administrator could not have any

title to the same. It is only when the shares remain part of the estate that the question of administration and the taking out of letters of administration

in respect of the same could arise. Otherwise anomalous results would follow. In this case, having regard to the Court sale of these shares in

execution of the decree in O.S. 391 of 1919, to which the only persons interested, defendants 2, 3 and 4, were parties, and having regard to the

finding of both the lower Courts in the present litigation that the decree in O.S. 391 of 1919, and the Court sale in execution of that decree and

purchase by the plaintiff in Court auction are all valid and binding on defendants 2, 3 and 4, it seems to me that these shares have ceased to belong

to the estate of the deceased Nallasivam Pillai and consequently no letters of administration would seem to be necessary in the circumstances of

this case. Further, it was urged by Mr. S. Varadachariar, the learned vakil for the appellant, that there is no provision of law under which letters of

administration could be applied for by a person in the position of the present plaintiff and that there is no provision under which Courts could grant

letters of administration in such a case to the plaintiff. The learned vakil for the respondent company was not able to satisfy us on this point by

showing us any provision of law under which letters of administration could be granted to the plaintiff. If the appellant is right in this contention of

his, then this is a sufficient answer to the defendant's plea about the letters of administration.

61. It was also urged by the learned vakil for the appellant that the plaintiffs had taken succession certificate in respect of the present shares. It was

also mentioned to us that in addition to taking, delivery under Order 21, Rule 79, Civil P.C., the plaintiffs had also applied to the Court for orders

under Order 21, Rule 80, Civil P.C., and that the executing Court had passed orders in favour of the plaintiffs under Order 21, Rule 80: vide the

order of the District Munsif of Ambasamudram in E.A. 962 of 1925, in O.S. 391 of 1915, dated 15th January 1926. The last paragraph of the

order is as follows:

The judgment-debtors will execute a transfer within a week from this date, in default whereof the Court may have to execute the necessary transfer

for them. The petition is adjourned to 25th January 1926. The judgment-debtors will produce the share certificates on or before that date.

62. No doubt the said order was made after the decision was passed by the lower appellate Court in the present case and before filing the present

second appeals. The present defendants 2, 3 and 4, who were the judgment-debtors in suit No. 391 of 1919 have preferred C.E.P. 58 of 1926 to

the High Court and that matter also is before us at present for final disposal. If we upheld the order of the learned District Munsif aforesaid, dated

15th January 1926, the first objection raised by the company in para. 11 of its written statement falls to the ground. As stated already the plaintiffs

have obtained succession certificates from the District Court, Tinnevely, in respect of these shares: vide orders dated 19th February 1926 passed

by the District Court, Tinnevely, in O.P. 109 of 1925 and 8 of 1926 under which

the petitioners (the present plaintiffs) were granted certificates to those shares as from the date of the Court auction in which the right to them was

acquired by the petitioners in O.P. 109 of 1925, namely, 27th March 1920.

63. Here again the orders were passed on 19th February 1926 after the decision of the lower appellate Court and before the second appeals were

filed. The sons of Nallasivam Pillai (present defendants 2 3 and 4) were parties to the said orders as also the present defendants 1 (Tinnevely Mills

and Co. Ltd.) The sons of Nallasivam Pillai have preferred Civil Misc. Appeals 312 and 313 of 1926 against the orders passed by the District

Judge granting certificates to the plaintiffs in these suits in respect of these shares in question and they are also posted before us for final disposal.

64. Having regard to what has been stated above, it seems to me that none of the grounds mentioned by the lower Courts are sufficient to warrant

the dismissal of the suits.

65. I have not thought it necessary to consider in great detail the argument urged by the learned vakil for the appellant that Rules 28, 29 and 30

should bread together; that Rule 28 gives a right to the company to recognize executors and administrators in the first instance as persons having

prima facie title to the shares of deceased members with a view to protect the rights of the company by calling upon them to get their names

registered in the books of the company or to allow the shares to be sold, so that the company may have better security for amounts that may be

due to it: *Bombay Burma Trading Corporation Ltd. v. Frederick Forke Smith* [1895] 19 Bom. 1, (Buckley on Company Law, p. 593), and that

the rules do not shut out the consideration by the company of the rights of claimants who became entitled to shares in consequence of bankruptcy

or liquidation of any member or of the marriage of any female member or by any other way than transfer, and that under Article 29 the company is

bound to consider evidence produced by such claimants in support of their claim to such shares; of course, if the company had any reasonable

doubt on the evidence produced before it under Rule 29 about the claims thus set up, that would be a different matter. In the present case, the only

objections raised by the company were: (1) objections under Articles 23 to 28, which, as already observed, do not apply; and (2) objection about

the necessity of letters of administration which has been also dealt with by me already. The contentions raised by defendants 2, 3 and 4, which the

company wanted to be settled before plaintiffs' rights are considered, have now been found to be absolutely untenable. The Munsif has noted in

his judgment that the company had in fact no personal objections to either of the plaintiffs and that it could not have had any such objections.

66. I am, therefore, of opinion that the second appeals should be allowed, the decrees of both the lower Courts reversed and the plaintiff's suit

decreed as prayed for as mentioned in the judgment of my learned brother. The memorandum of objections are dismissed with costs. The two

miscellaneous appeals and the civil revision petition are dismissed but without costs.

67. As the parties intimate that they are unable to agree as to the amount of the dividends, the matter will be remanded to the Court of first instance

for the ascertainment of the dividends payable by the first defendant company to the plaintiffs in the respective suits. As regards the interest claimed by the plaintiff on the dividends in view of the nature of the contention raised, we are not satisfied that they should be granted any interest previous to the institution of the suit. We, therefore, direct that the dividends that may be found to be payable to the plaintiffs in their respective suits shall carry interest at 6. per cent. per annum from the date of the institution of the suit, or such later date on which the same may be found to be payable, till the date of the order of the Court of first instance ascertaining the amount. C.R.P. No. 58 of 1926, C.M.P. No. 619 of 1926 and C.M.A. Nos. 312 and 313 of 1926 are dismissed as no orders are necessary.