

Anand Datwani and anr Vs. Janak Datwani and ors

Anand Datwani and anr Vs. Janak Datwani and ors

SooperKanoon Citation : sooperkanoon.com/1005782

Court : Delhi

Decided On : Jul-30-2013

Judge : S.Ravindra Bhat

Appellant : Anand Datwani and anr

Respondent : Janak Datwani and ors

Advocate for Pet/Ap. : Mr. Rajat Navet, Mr. Suresh Singh, Mr. Vivek Sharma, Mr. Akhil Sachar, Ms. Mamta Sharma, Mr. Ayush Agrawal, Ms. Diya Kapur

Judgement :

\$~2 & 3 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON:

30. h July, 2013 + FAO(OS) 57/2013 CNA EXPORTS PVT LTD AND ORS
Appellants Through : Mr. Rajat Navet and Mr. Suresh Singh, Advs. versus DAYAL D SHAHDADPURI AND ORS Respondents Through : + Mr. Vivek Sharma, Mr. Akhil Sachar and Ms. Mamta Sharma, Advs. for R-3. Mr. Ayush Agrawal, Adv. for R-2/Janak Datwani. FAO(OS) 60/2013 ANAND DATWANI AND ANR
Appellants Through : Mr. Rajat Navet and Mr. Suresh Singh, Advs. versus JANAK DATWANI AND ORS Respondent Through : FAO(OS)57/2013 & FAO(OS)60/2013 Mr. Vivek Sharma, Mr. Akhil Sachar and Ms. Mamta Sharma, Page 1 Advs. for R-3. Ms. Diya Kapur, Adv. for R-4. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) 1. The present common

judgment will dispose off two appeals being FAO(OS) Nos. 57/2013 and 60/2013, both connected against common judgment and order of 3rd January, 2013.

2. By the impugned judgment and order, the learned Single Judge had allowed an application , i.e., IA 8812/2011, filed in CS(OS) No.118/2007 by one Shri Dayal D. Shahdadpuri (hereinafter referred to as Shahdadpuri in these proceedings; he was the plaintiff in CS(OS)No.118/2007). Shahdadpuri had in his suit claimed ownership of 2500 shares of M/s. CNA Exports Pvt. Ltd., the appellant in FAO(OS) No.57/2013. It is urged that the amendment allowed by the impugned order overlooks that the plaintiff sought to set up an entirely different cause of action by urging that the shares in respect of which relief of declaration was sought were acquired pursuant to a transfer in 1999 by the fourth respondent in those proceedings, i.e. Ms. Nitya Bharaney. It is also submitted that these facts were never pleaded and urged in the suit and were sought to be introduced first time in the replication filed much later in 2011. The appellant M/s. CNA Exports Private Limited also impugns the other amendments allowed by the impugned order pertaining to transfer of shares in favour of Shri Janak Datwani, one of the defendants in the said suits sometime on 8th March, 2008. The said defendant has apparently filed independent proceedings being CS(OS)Nos.1113/2007, 1798/2011 and 2444/2013 touching upon the ownership of various shares and control in the same company, i.e. M/s. CNA Exports Pvt. Ltd.

3. The second appeal FAO(OS) 60/2013 pertains to an application, i.e. 737/2011 in CS(OS) No.556/2008. That suit was filed by Smt. Jamna Datwani claiming to be along with defendant Nos. 2 to 4 the owner/shareholder of M/s. CNA Exports Pvt. Ltd. to the extent of 85%. The impugned order has allowed an application by Shri Janak Datwani for transposition as plaintiff in the said suit, i.e. CS(OS) No.556/2008. The plaintiff Smt. Jamna Datwani has, in turn, been transposed as defendant in the suit. FAO(OS)57/2013 & FAO(OS)60/2013 Pag

4. Counsel for M/s. CNA Exports Pvt. Ltd. in both cases argues that the amendment and the transposition, including in these proceedings, should not have been allowed. It is submitted that so far as the application, i.e. CM No.8812/2011

seeking amendment by plaintiff, i.e. Shahdarpuri never claimed at the time of institution of the suit that the shares had been purchased from Ms. Nitya Bharaney. This entire case was set up much later, i.e. in 2011 in the replication. Similarly, the said plaintiff could not introduce subsequent events in the form of the cause of action for the present dispute. If the plaintiffs 2500 shares, subject matter of the proceedings, had been transferred to Shri Janak Datwani, it was for him to secure and protect his interest as the case may be. The plaintiff could not, in these circumstances, set up every subsequent event which took place, or occurred after institution of the suit, as the basis for amendment.

5. In FAO(OS) No. 60/2013, it was urged that the impugned order, so far as it transposed Shri Janak Datwani as the plaintiff in suit No.556/2008 instead of original plaintiff Smt. Jamna Datwani, was unjustified. Counsel highlighted the fact that the two pending applications by Ms. Jamna Datwani, i.e. CM Nos. 16086/2009 and FAO(OS)57/2013 & FAO(OS)60/2013 Pag

12310. 2010 had been withdrawn and a statement had in fact been made on her behalf in Court by the counsel on 23 rd February, 2012. It was submitted that in these circumstances, the learned Single Judge should not have permitted transposition of Janak Datwani as the plaintiff.

6. Counsel for Shahdarpuri submitted that the amendments allowed through IA 8812/2011 were justified. It is argued that so far as the first amendment pertaining to how he acquired the ownership of the shares was concerned, the matter itself was in issue and that he had sought for relief of declaration that he was true owner of 2500 shares. So far as the second amendment is concerned, learned counsel urge that in order to avoid multiplicity of proceedings, the transfer of the shares made in 2008 to Janak Datwani could conveniently be also the subject matter of suit No.118/2007.

7. Counsel for the respondents, especially Ms. Nitya Bharaney and Mr. Kishan Datwani submitted that the order transposing Janak Datwani as the plaintiff was justified. Learned counsel relied upon the following portions of the impugned order :

82. It is also argued by the defendant No.3 FAO(OS)57/2013 & FAO(OS)60/2013 Page 5 that even though she may not be withdrawing the suit in view of the statement made by her in the Court on 23rd February, 2012 (if accepted by the Court) but her conduct by admitting the transfer of shares and the averments made in her two applications and in other pleadings i.e. reply dated 27th September, 2009 in I.A. No.1230/2010 and reply dated 21st July, 2011 in I.A.No.14065/2011 and I.A. No.12309/2010 amounts to abandonment of the suit. Therefore, the defendant No.3 is entitled to be transposed as plaintiff. It is argued that there is a collusion between plaintiff No.1 and defendant No.1 Anand Datwani as she has totally taken the contrary stand in respect inter alia of shareholding of plaintiff No.2 after the report of CFSL dated 17th September, 2009 declaring the signatures of Nitya Bharaney on the share transfer instruments submitted by Anand Datwani i.e. could not be connected with the admitted signatures. Therefore, no prejudice would be caused if the defendant No.3 be transposed as plaintiff. The other two applications seeking the same relief filed by defendants No.2 and 4 for the similar reliefs were not argued by the counsel probably because the rejoinders in those applications were not filed by them.

102. Thus, it is necessary to allow his application by permitting him as plaintiff so that substantial question is decided against the other defendants in view of the reasons that the plaintiffs through plaintiff No.1 wanted to withdraw the suit on account of settlement agreement. It is settled law when a plaintiff even attempts to withdraw the suit on the rights of other coplaintiffs or proforma defendants FAO(OS)57/2013 & FAO(OS)60/2013 Page 6 who have an identical interest to that of the plaintiff, necessary orders can be passed by the Court against the said plaintiff as this Court has got apprehension that the plaintiff No.1 may now again abandon the suit in collusion with the defendant No.1 as alleged by defendant No.3 and may cause injustice to the other defendants.

8. Counsel for the respondents submitted that the conduct of the plaintiff in suit No.556/2008, i.e. Ms. Jamna Datwani was such that the Court could have reasonably inferred that she had abandoned the claim in the suit. It was in these circumstances that the learned Single Judge inferred that Shri Janak Datwani could be conveniently transposed as a party entitled to continue the proceedings.

9. The two suits in this case, i.e. CS(OS) No.118/2007 and CS(OS)No.556/2008 were instituted in two successive years. So far as the appellants challenge to the impugned order, to the extent it allows amendment with regard to the ownership of 2500 shares of Shahdadpuri is concerned, the Court is of the view that no exception can be taken as regards the approach of the learned Single Judge. The claim under the suit was for declaration that the plaintiff is the owner and entitled to exercise his rights as such over the 2500 shares of the FAO(OS)57/2013 & FAO(OS)60/2013 Page 7 company in question, i.e. CNA Exports Pvt. Ltd. That the plaintiff did not fully describe how he came by the shares or even contracted himself into his present position from the earlier position, where he claimed to be the original allottee, might raise issues; however, this Court is of the opinion that at the stage of amendment the position of law being what it is, that the Court should be liberal in its approach, the impugned judgment cannot be faulted. As far as the second question, i.e. transfer of 2500 shares to Janak Datwani by the plaintiff in CS(OS)No.556/2008, this Court is of the opinion that the learned Single Judge overlooked the fact that this was a subsequent event and impinged upon Mr. Janak Datwani's title to the shares. Concededly, Janak Datwani has preferred at least three original substantive proceedings, i.e. 2444/2013 . suit CS(OS)No.1113/2007, 1798/2011 and It is for him to agitate the manner in which he came by shares whether by transfer or by some other means, as claimed by Janak Datwani. Moreover, if the plaintiff Shahdadpuris version were to be ultimately accepted, Janak Datwani's title, which is based on subsequent events, would in any event be secured. FAO(OS)57/2013 & FAO(OS)60/2013 Pag

10. In these circumstances, the Court is of the opinion that the Single Judge fell into the error in permitting the amendments to the suit to this extent. The said amendments, proposed by para 5(F) and additional prayer (h) of the application 8812/2001 are consequently not allowed; the impugned order is, therefore, set aside to such extent.

11. So far as the submission of the appellant, vis-a-vis the order pertaining to the carriage of Suit No.556/2008 is concerned, the previous narrative would disclose that Janak Datwani preferred two applications seeking to withdraw the suit, which were later withdrawn. Counsel had made a statement on 23rd February, 2012

clarifying that the plaintiff Smt. Jamna Datwani - did not wish to withdraw the suit. The impugned order discusses the other parties submissions with regard to the plaintiffs (Jamuna Datwanis) abandonment of the suit, but does not attach much importance to her withdrawal of the two applications. In the light of these facts, this Court feels that the impugned order directed to transpose of Janak Datwani as the plaintiff in suit No.556/2008 was not called for.

12. In view of the above discussion, the appeal has to partly succeed; the impugned order today to the extent it has permitted FAO(OS)57/2013 & FAO(OS)60/2013 Page 9 amendments to para 5(F), para 10 and additional prayer(h) in IA 8812/2011 is allowed to the extent Mr. Shahdadpuri claims he has gifted the shares to sixth defendant, but not to permit Mr. Janak Datwani to agitate his shareholding in the present suit. That apart, amendments allowed in the impugned order are hereby set aside. The application for transposing in CS(OS)No.556/2008, i.e. CM No.737/2011 had to be dismissed. In the result, FAO(OS) 57/2013 is partly allowed to the extent indicated in para 10 above. FAO(OS) 60/2013 is allowed. No costs. S. RAVINDRA BHAT, J (JUDGE) NAJMI WAZIRI, J (JUDGE) JULY 30 2013 sn FAO(OS)57/2013 & FAO(OS)60/2013 Page 10