Bir Chand Vs. John Bros

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SooperKanoon Citation : sooperkanoon.com/454821

Court : Allahabad

Decided On : Nov-10-1933

Reported in : AIR1934All161

Appellant : Bir Chand

Respondent : John Bros

Judgement :
ORDER

Young, J.

1. Seth Bir Chand applied to the liquidator for rectification of the share register of the company on the ground that he was the owner of 3,843 shares in the company. Messrs. John Brothers, on behalf of the debenture-holders, objected f that the said rectification could not take place, as the debenture-holders of the Agra United Mills Co., Ltd., were the true owners, and they asked for rectification of the share register in their favour. The two claims arose oat of the following facts: In 1923 the Agra United Mills Co. Ltd., who owned these shares in the company now in liquidation, executed a trust deed whereby these shares inter alia were charged to the debenture-holders. In 1927 the debenture, holders brought a suit for enforcement of the debentures, and in the same year the Court. appointed an interim receiver of the assets of the company. In 1928 Seth Bir Chand brought a suit against the Agra United Mills Co. Ltd., for money due to him. He was

successful in this connexion, and a decree was passed in his favour for the amount claimed. In execution of his decree Seth Bir Chand applied for attachment of these shares. Messrs. John Brothers, on behalf of the debenture holders, applied to the executing Court saying that these shares could only be sold subject to their charge. This objection was upheld by the Court, and it ordered the sale of the shares in favour of Seth Bir Chand, but subject to the charge in favour of the debenture-holders of the Agra United Mills Co., Ltd. The shares were then sold in execution of the said Seth Bir Chand's decree against the Agna United Mills and bought by Seth Bir Chand for Rs. 3,500.

2. In the meantime, the debenture holders' suit for enforcement of the debentures was proceeding, and in February 1931 this suit was decreed. In execution of the decree these shares were put up for sale and purchased by the debenture-holders in the month of Januaryi4932. The question, therefore, is which of the two claimants are entitled to be registered as the owners of these shares. It is argued on behalf of Messrs. John Brothers as representing the debenture-holders that Seth Bir Chand brought his action against, the original owners of the shares, the Agra United Mills, pending the suit of the debenture-holders for enforcement of their debentures; that he, under the circumstances related above, brought the shares in execution of his decree against the Agra United Mills with full knowledge of the debenture-holders' charge on these shares and with full knowledge that he was making the purchase pendente lite, and that, therefore, he could have no higher title to these shares than the Agra United Mills had. On behalf of Seth Bir Chand two points have been taken. Firstly, it is contended that the transfer of these shares made in 1932 to the debenture-holders was a transfer after the winding up order had been made against the company who3e shares were transferred, that is, the Agra Spinning and Weaving Co., and that such a transfer according to Section 227(2), Companies Act, is void. The second point taken was that these shares were part of a floating charge, that therefore, according to para. 5 of the trust deed, the charge in no way

hindered the company. from selling, mortgaging or otherwise disposing of or dealing with the shares charged, and that, therefore, the sale to Seth Bir Chand being made before the winding up of the Agra Spinning and Weaving Co., was a valid sale. With regard to the first point argued on behalf of Seth Bir Chand, Section 227 (2) Companies Act, reads as follows:

In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

3. Dr. Asthana, on behalf of Seth Bir Chand, argues that the proper construction to be put on the section is that every transfer of shares without the previous sanction of the Court is void. I do not think that the section can bear this construction. If the legislature had meant that a transfer of shares without previous sanction should be void, it was perfectly easy for the legislature so to enact. In my opinion, the plain reading of the section means that it is within the jurisdiction of the Court at any time after the transfer of the shares ; to order that the transaction is a good transaction and shall stand. The words

every transfer of shares...shall, unless the Court otherwise orders, be void,

clearly allude to a transfer of shares which has actually taken place. In my opinion this reading is in accordance not only with law but with common sense and justice. Complete discretion has been left, and property left, to the Court to do whatever it may think just in a matter of this sort. Such an order, however, although it would be discretionary, would not ordinarily be made without good grounds for making it. In this case the debenture-holders sought to enforce the security many years before the winding: up order was made, and indeed their debenture suit was actually decreed some three months before the winding up order was made, that is, the debenture-holders' right had accrued before the winding up. There can be no possible reason, therefore, in this case for the Court to refuse an order declaring the transaction good. Apart from this point, it would not be in accordance with justice for the Court to refuse an order in this case. With regard to the second point, that the debenture-holders only had a floating charge on the property of the Agra United Mills, and the sale to Seth Bir Chand occurred previous to the winding up order, it is only necessary to say that he bought the shares subject to the charge, and that after the appointment of a receiver for the debenture-holders in 1927 it was quite impossible, of course, for the company to deal with their assets. The application of the debenture-holders in 1927 for enforcement of the security was an effective intervention by them and it is the essence of a floating charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes : see the judgment of Lord Macnaughten, in Government Stock and other Securities Investment Co. v. Manila-By. Co. (1897) A.C. 81.

4. It is clear, therefore, that the objection of the debenture-holders is a valid one and that the share must be registered in the name of the debenture-holders. Uader Article 297 of the Articles of Association of the company in liquidation a fee of Rules 1 per share is payable to the company on a transfer. Before the company went into liquidation Seth Bir Chand paid the company Eupees 3,843 for the transfer of these shares. Dr. Asthana, on behalf of Seth Bir Chand, prays for an order that this money should now be returned to his client in view of the decision in this application. I am afraid I can make no such order. The money was paid not to the liquidator, but to the company. At the date in question Sefch Bir Chand had a right to be registered as the owner of these shares. That registration was not carried out. If it had been, the decision today would necessitate a rectification in favour of the debenture-holders, who of course would, and will, have to pay Rs. 1 per share for the transfer in their favour. Seth Bir Chand certainly had to pay the money for registration. It is no fault of the liquidator that he was not registered as a shareholder, and as I have already said, if he had been registered, his name would now have to be expunged. It may be, and I do not express an opinion on this, that he may have an action against the directors of the company for such damages as he may think he has a right to claim for failure to register his name or for return of the money paid to them for registration as money received for his use and upon a consideration which has failed. If Seth Bir Chand is so advised, he may possibly lodge a claim for this amount in the liquidation. Whether such a claim would be successful or not is a matter on which at present I express no opinion.

5. Before the rectification is effected in favour of the debenture-holders they must, of course, pay to the liquidator Rs. 1 per share for the registration of the transfer. Under the trust deed, although the charge only applied to 3,841 shares, the actual amount now is 3,843 shares, and as the debenture-holders have a charge on all the assets of the Agra United Mills, the total amount of the shares in the possession of the Agra United Mills being 3,843, the debenture-holders will be entitled to this number of shares. I think the successful applicant is entitled to his costs from Seth Bir Chand, which I fix are Rs. 150. The decree will not be prepared until the successful applicant has paid the proper stamp duty on his application.