

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Surendra Kaur and ors. Vs. Singh Engineering Works (P.) Ltd.

Surendra Kaur and ors. Vs. Singh Engineering Works (P.) Ltd.

SooperKanoon Citation : sooperkanoon.com/458693

Court : Allahabad

Decided On : Apr-03-1975

Reported in : [1977]47CompCas638(All)

Judge : Satish Chandra, J.

Acts : [Companies Act, 1956](#) - Sections 155

Appeal No. : Company Petition No. 16 of 1974

Appellant : Surendra Kaur and ors.

Respondent : Singh Engineering Works (P.) Ltd.

Advocate for Def. : J. Swarup and ;V. Swarup, Adv.

Advocate for Pet/Ap. : B.N. Bhattacharya and ;R.K. Asthana, Adv.

Disposition : Application dismissed

Judgement :

Satish Chandra, J.

1. This application under Section 155 of the [Companies Act, 1956](#), prays that the register of Messrs. Singh Engineering Works (Private) Ltd., Kanpur, be rectified by directing the company to effect transmission of 1,500 shares held by Sardar Gurcharan Singh in favour of the applicants.

2. Sardar Gurcharan Singh died on 14th June, 1969. It is admitted that he held 1,500 shares in Messrs. Singh Engineering Works (Private) Ltd., Kanpur, the respondent-company. Nearly five years after his death the applicants, who are the widow and the children of the deceased, Sardar Gurcharan Singh, sent a letter dated 29th April, 1974, to the company requesting the transmission of 1,500 shares held by Sardar Gurcharan Singh in favour of the applicants.

3. On 9th May, 1974, the company replied that Sardar Gurcharan Singh had left a will, under which the 1,500 shares held by him were bequeathed by him to Sardar Deva Singh Inder Singh Public Charitable Trust. Sardar Gurbux Singh, who had been nominated as the executor of the will, applied to the company for transmission of the 1,500 shares in favour of the trust. The company accepted the will and, according to the direction of Sardar Gurcharan Singh, contained in the will, effected transfer of the shares in favour of the trust. The trust is the registered holder of the shares in the books of the company.

4. The petitioners' case is that the reply of the company is illegal and dishonest. They were liable to effect transmission of shares in favour of the applicants. They having defaulted on this count, their register of shareholders was liable to be rectified.

5. In the counter-affidavit the company has taken up the same plea, namely, that Sardar Gurcharan Singh had executed a will, under which the shares were bequeathed to the trust. On an application made by the managing trustee of the trust, which was accompanied by a copy of the will and the original share scrips, the company effected transmission of the shares in favour of the trust. The company's case is that since the trust is the holder of the shares in the books of the company, the company's register cannot be rectified without impleading the trust and without the will being declared invalid. It has been alleged that the applicants had not taken steps to get the will set aside through court.

6. In the rejoinder affidavit the applicants have characterised the will as a forged document. It is, however, not denied that the applicants have yet taken no steps for the setting aside of the will.

7. The position is that the company has effected transmission of the shares in favour of the trust. This has been done on the basis of a will executed by Sardar Gurcharan Singh, which will has been treated by the company as a valid document. The applicants have not impleaded the trust. They have not taken any steps to summon the will which is alleged by the company to be in the possession of the executor. The applicants have led no evidence to disprove the will or its execution. It is evident that unless the validity of the will is adjudicated upon, the company cannot be castigated for having transmitted the shares in favour of the trust. Till the transmission effected by the company in favour of the trust is set aside no direction can be made for rectification of the register of the company by effecting transmission of the shares in favour of the applicants. The question of the genuineness or the validity of the will raises controversial questions of fact, which cannot be decided on affidavits and which can more conveniently be decided in a regular title suit in the civil courts.

8. In *Mahendra Kumar Jain v. Federal Chemical Works Ltd.* [1965] 35 Comp Cas 651 (All) it was held that where the petitioner's title to the shares was itself seriously disputed and there were several disputed questions of fact requiring determination, Section 155 could not be applied and the share register could not be rectified, and that the petitioner was free to pursue his remedies in the civil court. The ratio of this case is fully applicable to the facts of the present case. Here, several disputed questions of fact require determination. The petitioners' title to the shares is seriously disputed by the respondent-company. On the facts and circumstances of the case this is not a fit case for the exercise of the powers conferred on this court under Section 155. From this point of view the petition is not maintainable.

9. On behalf of the applicants reliance was placed upon *Indian Chemical Products Ltd. v. State of Orissa* [1966] 36 Comp Cas 592 (SC). It was held there that the power under the articles of a company to refuse registration of the transfer is a discretionary power. The directors must exercise the power reasonably and in good faith. If they act capriciously or in bad faith, the court can control their discretion. This case is not applicable. I am not satisfied that the directors refused to register the shares in the applicants' names capriciously or in bad faith. The

applicants made the request for transfer of the shares in their names long after they had already been registered in the name of the trust.

10. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* [1961] 31 Comp Cas 387 (SC) the Supreme Court emphasised that the scope of the appellate power under Section 111 of the Companies Act was co-extensive with the court's power under Section 155. There is no dispute on the point. The case is inapplicable.

11. Issue No. 2, which was-

' Whether the application is not maintainable on account of its involving complicated questions of title '

is accordingly decided in the affirmative. In view of the decision on this issue, it is not necessary to decide the other issues raised in the case. The applicants will be at liberty to take such steps for settlement of their title to the shares as they may be advised.

12. In the result the application fails and is accordingly dismissed, but I make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com