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

Smt. Premvati and ors. Vs. Smt. Bhagwati Devi and ors.

Smt. Premvati and ors. Vs. Smt. Bhagwati Devi and ors.

SooperKanoon Citation : sooperkanoon.com/714659

Court : Delhi

Decided On : Sep-24-2007

Reported in : [2008]145CompCas440(Delhi)

Judge : Anil Kumar, J.

Acts : Companies Act, 1956 - Sections 2(11), 10, 108, 155 and 397 to 407

Appeal No. : C.S.(OS) No. 305/1996

Appellant : Smt. Premvati and ors.

Respondent : Smt. Bhagwati Devi and ors.

Advocate for Def. : Ashish Bhagat, Adv. for Defendant Nos. 1 to 3 and 5 to 12 and ; Pramod Aggarwal, Adv. for Defendant No.

Advocate for Pet/Ap. : Sunita Harish, Adv

Judgement :

Anil Kumar, J.

1. This order shall dispose of the preliminary issue, whether the suit as framed is not maintainable in view of the provisions of Sections 397 to 407 of the Companies Act? (OPD), framed on 14th November, 2002.

2. The plaintiffs have filed this suit for partition and rendition of accounts contending inter-alia that Sh. Banwari Lal was the common ancestor of plaintiffs and defendant Nos. 1 to 6. Plaintiff No. 1 is the grand daughter of Late Sh. Banwari Lal, daughter of Sh. Bal Kishan Das son of Sh. Banwari Lal. The plaintiff No. 2 is the son, plaintiff No. 3 is the widow and plaintiff No. 4 is the daughter of Sh. Gopal Kishan Das, son of late Sh. Bal Kishan Das.

3. According to the plaintiffs late Sh.Banwari Lal constituted and started his proprietary concern under the name and style of M/s. Bhana Mal Gulzari Mal, Chawri Bazar, Delhi. Later on Sh.Bal Kishan Das who was the only son of Sh. Banwari Lal along with his son constituted six private limited companies and registered them under the Indian Companies Act for the purpose of taking over the entire capital, assets and liabilities of M/s.Bhana Mal Gulzari Mal. Defendant Nos. 7 to 12, took over the entire capital, assets and liabilities of the said sole proprietary concern, M/s. Bhana Mal Gulzari Mal.

4. According to the Plaintiffs all the share holders of these companies were and presently are also heirs of late Sh. Banwari Lal and as such these companies are family concerns.

5. Plaintiffs contended that out of the funds, money and estate of M/s.Bhana Mal Gulzari Mal, the companies which were created being defendant Nos. 7 to 12, heirs of Sh.Banwari Lal have acquired, purchased, constructed and built up various movable and immovable properties whose details are given in Schedule C of the plaint. The plaintiffs' allegation is that defendant Nos. 2 to 6 are controlling and running the defendant Nos. 7 to 12 and they are keeping profits and assets of defendant Nos. 7 to 12 to themselves only and are not rendering any accounts and the plaintiffs have been deprived of their share. The plaintiffs have also averred that various premises were acquired under the tenancies and some of them have been transferred by the defendant Nos. 1 to 6 in their own personal names. It has also been alleged that some of the properties which were owned by M/s.Bhana Mal Gulzari Mal or defendant Nos. 7 to 12 have also been transferred by the defendant Nos. 1 to 6 in their own name or are being used for their personal use. The plaintiffs have given the details of misuse of properties of defendant Nos.

7 to 12 in para 9 of the plaint where the allegation has also been made that the house at A-3, Soami Nagar, Delhi was purchased by defendant No. 3, Sh. J.K. Das from the funds of the companies. Regarding property at Patna it is contended that originally it was owned by M/s. Banwari Lal and Sons Pvt. Ltd. defendant No. 10 but later on this was transferred to defendant Nos. 9 and 11 which has been taken at a nominal rent by defendant No. 5 at a rate which is much lower than the market rate and the said property has been sublet at a much higher rate.

6. The plaintiffs have also made allegations that movable assets of late Sh.Bal Kishan Das have been transferred by Sh.S.K.Das, defendant No. 6 in his personal name and in the name of his family members. The plaintiffs in the circumstances have sought partition of the properties as shown in Schedules. Schedule B gives the details of share in the companies, defendant Nos. 7 to 12 and Schedule C gives the details of movable properties, Schedule D gives the premises which were taken on rent at different places, Schedule E gives the details of misused properties of defendant Nos. 7 to 12.which schedules are annexed with the plaint.

7. The plaintiffs have claimed the following shares in the properties:- Plaintiff No. 1, 1/8th share; Plaintiff No. 2, 1/3rd share out of 1/8th share; Plaintiff No. 3, 1/3rd share out of 1/8th share and Plaintiff No. 4, 1/3rd share out of 1/8th share.

8. The suit is contested by the defendants. The defendant No. 4 has contended that defendant Nos. 7 to 12 are limited companies incorporated under the Companies Act and the companies are separate and distinct entities and cannot be the subject matter of partition and if the plaintiffs are entitled to transfer of shares inherited by them in their own name and the companies have denied or refused, for such transfer the remedy lies either before the Company Law Board or the Company Court.

9. The defendant No. 4 has also opposed the claim of plaintiffs on the ground that the plaintiffs have not shown any document or proof of inheritance regarding plaintiffs claim of 1/8th share of plaintiff No. 1 and 1/3rd share of 1/8th shares each of plaintiff Nos. 2 to 4. According to the said defendants the plaintiffs have not specified as to how they own the said properties or any share in them and why the partition is necessary on account of alleged mismanagement in the companies by

not filing the Income Tax returns and not holding the AGM. It is contended that the said allegations cannot be decided in a suit for partition and rendition of accounts and the remedy available is before Company Law Board or the Company Court. In reply to para 9 of the plaint making a specific allegation that the plot and construction of house at A-3, Soami Nagar was done by defendant No. 3, Sh.J.K.Das from the funds of the company it is averred by defendant No. 4 that the allegations cannot be looked into in the present proceedings which is for partition and the plaintiffs cannot agitate their grievances vis-a-vis management of the company and/or company assets in the present proceedings.

10. The defendant Nos. 7 to 12 have also opposed the claims of the plaintiffs contending that the defendant Nos. 7 to 12 are private limited companies whose shares are owned by share holders and any relief against the said companies can be granted only as per the Companies Act. The allegations regarding mismanagement of the companies was denied by the said defendants.

11. The defendants have relied on : AIR 2005 SC809 , Sangramsinh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (Dead) by LRs and Ors. to contend that this Court does not have jurisdiction in view of Section 397 to 407 of the Companies Act, 1956. The learned Counsel for the plaintiff, Ms. Sunita Harish has relied on : 92(2001)DLT442 , Naresh Kumar Aggarwal and Ors. v. Davender Kumar Mittal and Ors. : AIR 1998 SC3153 , Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. and Ors. : [1955]27ITR1(SC) , Mrs.Bacha F. Guzdar v. Commissioner of Income Tax, Bombay 1982 (52) Comp Cas. 362, Marikar (Motors) and Another v. M.I. Ravi Kumar and Ors. 1990 (67) Comp. Cas. 691, Pradip Kumar Sarkar and Ors v. Luxmi Tea Co. Ltd. and Ors. (1985) 2 Delhi 459, Maharaja Exports and Anr. v. Apparels Export Promotion Council and : AIR 2003 SC2696 , Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala and Ors. to contend that bar of jurisdiction of Civil Court is not to be readily inferred and the Company Act does not contain any express provision barring the jurisdiction of the ordinary Civil Courts in matters covered by the provisions of the Act and only in certain cases the jurisdiction of Civil Courts is impliedly barred and, thereforee, the jurisdiction of this Court is not barred under Section 397 to 407 of Companies Act, 1956.

12. I have heard the learned Counsel for the parties at length and have also perused the pleadings and the documents. It cannot be disputed that except in cases where the Companies Act, 1956 confers jurisdiction in Company Court or some other authority like the Central Government or the Company Law Board, either expressly or by implication, all other disputes pertaining to a company are to be resolved through a forum of Civil Courts.

13. In M/s. Maharaja Exports and Another (Supra) a suit for declaration was filed against the defendant council, a private limited company seeking declaration that notice issued by defendant for Annual General Meeting is illegal, inoperative and invalid and that the existing members are not entitled to hold office as they have retired by rotation. The suit was contested on the ground that the Civil Court has no jurisdiction to entertain the petition and also on the ground that the notice is invalid. A Single Judge of this Court had held that Section 10 of the Companies Act defines the jurisdiction of the Court to entertain the suits. The definition of the 'Court' in Section 2(11) and Section 10 of the Companies Act, 1956, dealing with jurisdiction of Courts, read together enables the shareholders to decide as to which Court they should approach for remedy in respect of a particular matter. On the issue regarding whether the Court had jurisdiction to try the suit it was held that where wrong is done to an individual member he can insist by recourse to a civil suit on 'strict observance' of the legal rules, statutory provisions and provisions in the memorandum and articles of Association which cannot be waived by a bare majority of shareholders. In the suit for declaration filed by the plaintiff besides other reliefs he had also sought a declaration that all the 27 members of the existing executive committee were not entitled to hold the respective offices and that 18 members of the executive committee who had retired by rotation were not entitled to continue in office as members of the executive committee. In these circumstances it was decided that the Civil Court had jurisdiction. The learned Single Judge in this case had also relied on R. Prakasam v. Sree Narayana Dharma Paripalana Yogem 1980 Comp. Cas. 611. In which it was held that except in cases where the Companies Act, 1956 confers jurisdiction on the Company Court or some other authority like the Central Government or the Company Law Board, either expressly or by implication, all other disputes pertaining to a company are to be resolved through a forum of Civil Court.

14. The Calcutta High Court in Pradip Kumar Sarkar and Ors (Supra) had held that jurisdiction of Civil Court is not barred expressly or by necessary intendment by Sections 397 and 398 of the Companies Act. It was held by a Single Judge of that Court that Sections 397 and 398 of the Companies Act, 1956 conferred a right on the shareholders who have the requisite qualification under Section 399 of the Act to apply to the Court for appropriate reliefs and these sections do not, either expressly or by necessary intendment oust the jurisdiction of the Civil Court to entertain suits on the same subject matter. In the facts of the case it was held that the conduct of the company had made it clear that many of the transfers in favor of defendants had been improperly executed and the company and its Board of Directors had taken a partisan attitude in the matter of approval of transfer of such shares and that person in whose favor shares were transmitted had executed the transfer deeds even prior to their becoming the registered members although they had no absolute interest in the shares on the date when the transfer deeds were executed which deeds were invalid and not in compliance with the provisions of Section 108 of the Companies Act, 1956. The Court had held as under:

Sections 397 and 398 of the Companies Act, 1956, confer a right on the shareholders who have the requisite qualification under Section 399 of the Act, to apply to the court for appropriate reliefs. These sections do no, either expressly or by necessary intendment, oust the jurisdiction of the civil court to entertain suits on the same subject-matter. Where shareholders complain of mismanagement or oppression and of acts prejudicial to the interest of the company or prejudicial to public interest, the civil court may entertain a suit by the shareholders and grant appropriate reliefs. Moreover, unless a statute, by express provision or by necessary implication, ousts the jurisdiction of the civil court, the civil court will have jurisdiction to try all suits of a civil nature. The ouster of the jurisdiction of the civil court shall not be readily inferred.

In a proper case, there is no impediment in the exercise of power by the court to supersede the board of directors of a company, although it has the support of the majority, if it is found that it is acting illegally, mala fide or in a manner oppressive to the minority shareholders or in a manner prejudicial to the interests of the company or to the public interest. The court always has jurisdiction to prevent

abuse of majority power. In fact, it is incumbent on the court to interfere in such matters and to temporarily take over the management of the company until the legitimate grievance of the shareholders regarding the management of the affairs of the company are set right.

The court can temporarily take over the management of the affairs of the company by the appointment of a receiver or a special officer. the court need not appoint a receiver or a special officer for all times to come but, may, for a limited period and limited purpose, appoint a receiver or a special officer to take over the management.

15. The proposition that the Companies Act is a complete and self contained code and only the Company Court could resolve disputes between a company and its members in proceedings under the Act was not accepted by a Single Judge of Kerala High Court in Marikar (Motors) and Another (Supra) holding that a suit would lie by a minority when the grievance is that a fraud is being perpetrated and they are being oppressed by lack of probity and fair dealing. It is open for the share holders to sue for restraining a threatened breach of provisions of the Memorandum or Article of Association and they can also seek a declaration against the resolution altering the memorandum or article though passed in proper form on the ground that it is not in good faith and for the benefit of the members as a whole. Where a resolution is passed by a general meeting when it should have been passed as a special or extra-ordinary resolution, its validity can likewise be challenged by the members. Similarly, a representative action to restrain the company from doing an Act contrary to the provisions of the Companies Act or the general law or from giving effect to an invalid decision of the general meeting is also permissible. Five classes of cases have been crystallised where a suit by a shareholder instead of by the company is considered permissible:-(i) when it is complained that the company is acting or proposing to act ultra-vires; (ii) when the act complained of, though not ultra virus the company, could be effective only if resolved upon by more than a simple majority vote, i.e., where a special or extraordinary resolution is required and (it is alleged) has not been validly passed; (iii) where it is alleged that the personal rights of the plaintiff shareholder have been infringed or are about to be infringed at any rate if the wrong to the plaintiff

could not be rectified by an ordinary resolution of the company; (iv) where those who control the company are perpetrating a fraud on the minority and (v) any other case where the interests of justice require that the general rule, requiring suit by a company, should be disregarded.

16. The objection of the defendants is that the suit is barred on account of Section 397 to 407 of the Companies Act. Section 397 provides that any member of a company having a grievance that its affairs are being conducted in a manner oppressive to them may apply to the Court for an order under this sub-Section Section 398 makes a like provision where the grievance that the affairs are conducted in a manner prejudicial to the company's interests can be raised. However, only a group of members having a specified voting strength under Section 399 could resort to these remedies. Section 408 also empowers the Central Government to grant some relief from oppression and mismanagement to the minority, but here again the application must be by a specified number of shareholders.

17. If the argument of the defendants is to be accepted that these provisions exclude recourse to the ordinary course, then plaintiffs who admittedly do not have the necessary voting strength to proceed under any of these Sections will be completely excluded because they are not even the shareholders. If the argument of the defendants is to be accepted then only those shareholders who have necessary voting strength under the said provisions of the Companies Act would have a remedy available to them and other share holders not having necessary strength or those who are not the shareholders shall be remediless. The plaintiffs are claiming that these companies were started from the assets of the common ancestor and they have rights in the properties of their common ancestor. Consequently, it cannot be inferred that the plaintiffs in the present facts and circumstances at this stage, when the pleas and contentions of the plaintiffs that these companies were started from the assets of the common ancestor and they have rights in them and some of the properties have been misappropriated by the defendant Nos. 1 to 6, do not have a right to get their pleas adjudicated and their relief is barred under Section 397 to 407 of the Companies Act, 1956 is not tenable. The said sections of the Companies Act, 1956 do not bar the suit of the

plaintiff specifically. In absence of words expressly or clearly barring the jurisdiction of the Civil Court, it will not be appropriate to hold that the jurisdiction of the Civil Court is barred under Section 397 to 407 of the Companies Act, 1956 in the present facts and circumstances.

18. These inferences are further fortified on account of ratio of the judgment of the Supreme Court. The Apex Court in Dwarka Prasad Agarwal (Dead) by LRs and Another (Supra) relying on AIR 1968 SC 620, Lallu Yeshwant Singh (Dead) by Legal Representatives v. Rao Jagdish Singh and Ors. and R.Prakasam (Supra) had held that unlike some other Statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary Civil Courts in matters covered by the provisions of the Act. In certain cases like winding up of companies, the jurisdiction of Civil Courts is impliedly barred. However, where a person objects to the election of Directors and claims a decree for declaration that he was one of the Directors, there is no provision which bars the civil Court either expressly or by implication, from trying such a suit. In the dispute before the Supreme Court in the said case the plaintiff had sought that all the 27 members of the existing executive committee were not entitled to hold the respective office in view of the judgment of this Court and further that the 18 members of the executive committee who had retired by rotation were not entitled to continue in office as members of the executive committee. It was held by the Apex Court that the civil suit was maintainable. The Apex Court in Ammonia Supplies Corporation (P) Ltd. (Supra) had also held that the Company Court under Section 155 of the Companies Act, 1956 is to adjudicate the facts and circumstances whether the dispute raised really pertains to rectification or under the garb of rectification questions of fact involving contentious issues are raised. If dispute found to be relating to the peripheral field of rectification, then the Company Court under Section 155 will have exclusive jurisdiction and jurisdiction of Civil Court will be impliedly barred but if finding is otherwise then Civil Court shall have jurisdiction. The Supreme Court reiterated that unless jurisdiction is expressly or implicitly barred under a Statute, for violation or redress of any such right, the Civil Court would have jurisdiction. It was held that there is nothing under the Companies Act expressly barring the jurisdiction of the Civil Court but the jurisdiction of the 'Court' as defined under the Act exercising its power under various Sections where it has

been invested with exclusive jurisdiction, the jurisdiction of the Civil Court is impliedly barred.

19. A Division Bench of this Court in Naresh Kumar Aggarwal (Supra) relying on The Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. and Ors. : AIR 1998 SC3153 had held that reference to 'Court' under sub-Section 11 of Section 2 and Section 10 of the Companies Act does not oust the jurisdiction of the Civil Court completely.

20. Both the parties have also relied on Sangramsinh P.Gaekwad (Supra). In this case, a class I heir of a majority shareholder had raised a grievance regarding allotment of shares by inheritance. A pure question of title had arisen on account of dispute raised in the proceedings and it was held that a pure question of title is alien to an application under Section 397 of the Companies Act where the lack of probity is the only test.

21. What emerges in the facts and circumstances is that a dispute as regard right of inheritance between the parties is imminently a civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders and/or mismanagement. Plaintiffs are not even the shareholders. They are seeking partition of properties which are the companies and their rendition of accounts which will involve determination whether those properties are the properties acquired from the common properties of common ancestor or of defendant Nos. 1 to 6 which cannot be adjudicated by a Company Court under the provisions of the Companies Act, 1956. Whether the shares have been inherited by the plaintiffs or not and to what extent the shares have been inherited is to be determined by a Civil Court. Whether some of the properties of the companies have been misappropriated and transferred by defendant Nos. 1 to 6 for their personal use and could not be transferred are also such disputes which cannot be determined by the Company Court under the provisions of the Companies Act, 1956. For partitioning of the assets of the companies, Defendant Nos. 7 to 12, after determination that they were started from the assets of common ancestor and the share of the plaintiff, if dissolution of the companies is required for which invocation of the Company Court may be required, the Civil suit for partition will

not be completely barred. thereforee it cannot be inferred that the suit of the plaintiffs is barred under Section 397 to 407 of the Companies Act, 1956.

22. In the circumstances, the preliminary issue framed on 14th November, 2002 `Whether the suit as framed is not maintainable in view of the provisions of Section 397 to 407 of the Companies Act,' is decided against the defendants holding that the suit of the plaintiffs is not barred and is maintainable. The said issue is thus decided accordingly.

23. Since it is held that the suit is maintainable, the learned Counsel for the defendants seek time to file the documents.

24. Original documents or certified copies of documents, if not already filed be filed within four weeks.

25. List before Joint Registrar for admission/denial and marking of documents on 12th November, 2007 and before the Court for framing of remaining issues on 18th February, 2008.

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