Dharwar Bank Ltd. Vs Mahomed Hayat

None

Court: Bombay High Court

Date of Decision: Aug. 29, 1930

Acts Referred:
Companies Act, 1956 â€" Section 29, 33#Contract Act, 1872 â€" Section 23

Citation: AIR 1931 Bom 269

Hon'ble Judges: Patkar, J; Baker, J

Bench: Full Bench

Judgement

Patkar, J.
This was a suit brought by the plaintiff for a declaration that he was the owner of the ten shares in the defendant bank. The

defence was that the shares belonged to the deceased son of the plaintiff and that the bank had a charge on the shares for the debts of the

deceased.

2. The learned Subordinate Judge held that the plaintiff proved that the shares in question belonged to him. On appeal the case was remanded and

the learned Subordinate Judge on remand held that the shares in suit did not belong to the plaintiff and that the name of the son was not entered

benami for the plaintiff as alleged, and therefore dismissed the plaintiff"s suit.

3. On appeal the learned District Judge held that there was no presumption of any intended advancement in favor of the son, and that the evidence

adduced on behalf of the defendant was so slender and meager that he would not be justified in holding that the defendant discharged the burden.

He therefore sot aside the decree of the lower Court and granted the declaration sought for. The second appeal was dismissed and against the

order summarily dismissing the appeal the defendant has filed this appeal.

4. It is first urged on behalf of the appellant that the purchase by the father was in contravention of Rule 12, Government Servants" Conduct Rules

and therefore the purchase made by the plaintiff was void on the ground of public policy u/s 23, Contract Act. Rule 12 runs as follows:

A Government servant may not make any investment, other then an investment in immovable property permitted by Rule 10, which gives him such

private interest in matters with which his public duties are connected as would be likely in the opinion of the Local Government to embarrass or

influence him in the discharge of his duties.

5. In the rule in question there is no absolute prohibition to make an investment other then an investment in immovable property permitted by Rule

10 unless such investment was inconsistent with the duties of the Government servant. In the present case there is no evidence to show the position

occupied by the present plaintiff, and it does not appear that the investment in the shares of the bank would have been inconsistent with his duties.

According to the decision in Janson v. Driefontein Consolidated Mines, Ltd. [1902] A.C. 484 puplic policy is not a safe or trustworthy ground for

legal decision, and it must be considered in every case whether the transaction in its inception amounted to or involved an illegality or was of such a

nature that if permitted it would defeat the provisions of the law; see Govind v. Pacheco [1902] 4 Bom. L.R. 948. The question was considered

by this Court in Ramkrishna Trimbak v. Narayan [1915] 40 Bom. 126 where it was held the Government Servants'' Conduct Rule is not based

upon any statutory prohibition but is as it is expressed to be, merely a rule of conduct. I agree with the view taken in the case of Manuel S. Lobo

Vs. Nicholos Britto, , where it was held that the ac quisition of property by a Government servant in the name of another in direct contravention of

departmental rules is not illegal, and that such Government servant if he is in possession of the property so acquired is entitled to maintain a suit for

declaration of his title as against the person in whose name it was acquired, and if not in possession, is entitled to maintain a suit for possession. To

the same effect is the decision in the case of Bhagwan Dei v. Murari Lal [1917] 39 All. 51, overruling the previous decision of that Court in Shiam

Lal v. Chhaki Lal [1900] 22 All. 220 and Sheo Narain v. Mata Prasad [1904] 27 All. 73. Walsh, J., emphasized the necessity to distinguish

between the conduct of a person and the subject matter of the Contract. Though the conduct of a person might be opposed to public policy the

subject matter of the contract is not necessarily opposed to public policy, in the absence of any statutory prohibition. The same view was taken in

Kamala Devi v. Gur Dayal [1617] 39 All. 58. The decision in the case of Abdul Rahman v. Ghulam Muhammad AIR 1927 Lah. 18 is not

necessarily inconsistent with this view and is based on the ground that a patvari is absolutely prohibited by a statutory rule from acquiring land in his

own circle. We think therefore that the purchase of the shares by the present plaintiff is not illegal and opposed to public policy u/s 23, Contract

Act.

6. The next question is whether the shares belong to the present plaintiff or there was an advancement in favor of the deceased son of the plaintiff.

According to the decision of the Privy Council in Kerwick v. Kerwick AIR 1921 P.C. 56 and Guran Ditta v. Ram Ditto AIR 1928 P.C. 172 the

general principle of equity applicable is that in the case of a voluntary conveyance of property by a grantor, without any declaration of trust there is

a resulting trust in favor of the grantor, unless it can be proved that an actual gift was intended, and though the law in England is somewhat different,

in India there is no presumption of an intended advancement in favor of wife or child. The learned Assistant Judge on consideration of the whole

evidence came to the conclusion that the evidence adduced on behalf of the defendant was so meagre that he would not be justified in holding that

the defendant had discharged the onus, learned Assistant Judge has not considered the fact that from 1914 till the death of the son on 30th

November 1922 the dividends were paid to the son and not to the father. That would merely indicate an acquiescence by the present plaintiff in the

payment of the dividends to the son, but unless his suit was beyond time the acquiescence would not deprive the plaintiff of the right to which he is

entitled. We think therefore that the finding of the lower Court that there, was no advancement intended by the father in favor of the son, based on

the evidence in the case, must be accepted in second appeal.

7. The third question is whether the pre sent plaintiff"s suit is barred by limitation. It is urged on behalf of the appellant that the suit is barred by

limitation under Article 120 on the ground that from 1914 the dividends were paid to the son. But it appears clear from the evidence that the

plaintiff was contending from the very beginning that the shares did not exclusively belong to the son and that his name should be entered along with

the son and it was only on 6th June 1918 that the defendant rejected the request of the plaintiff. The Bank advanced money to the son on the

security of the shares after the plaintiff gave notice to the bank not to pay dividends to the son on the ground that the transaction was benami. The

learned Subordinate Judge therefore held that the plaintiff"s claim was not barred by limitation as the suit was brought within six years when his

claim was denied by the defendant. The lower appellate Court was not invited to go into the question of limitation when the case was argued

before it, but during the course of the judgment the learned Judge observed that the bank on 6th June 1918, rejected the request by Ex. 57. Taking

that as the starting point of limitation, we think that the plaintiff"s claim is not beyond time.

8. It is not necessary to deal with the point based on Sections 29 and 33, Companies Act, which was not taken in any of the lower Courts nor in

the memorandum of appeal, but though the bank could not recognize a trust in respect of the shares or was not bound to recognize such a trust, it

would not prevent the Court from considering the rights between the parties and the propriety of the dealing by the defendant after the notice given

by the plaintiff: see Halsbury"s Laws of England, Vol. 5, p. 151, note (c) and Mackerath v. Wigan Coal & Iron Co. Ltd. (12).

9. We think therefore that on the whole the view taken by the lower Court is right and this appeal must be dismissed with costs.

Baker, J.

10. The argument that the plaintiff being a Government servant could not purchase the shares in his own name is really an admission that the

purchase money proceeded from the plaintiff, and his son at the time was a minor who could have had no money of his own.

11. This being so, the next question that arises is whether his purchase was by way of a benami purchase or whether it was by way of an

advancement to the son. In this connexion the learned Assistant Judge has referred to the leading case of the Privy Council, Kerwick v. Kerwick

AIR 1921 P.C. 56, and there is a similar case, Guran Ditta v. Ram Ditto AIR 1928 P.C. 172, from which it will appear that the doctrine of

advancement would not apply in India. The question mainly arising is the shares being the property of the plaintiff, whether there is anything in the

circumstances of this case which would prevent his recovering the property from the bank. So far as the argument is based on the Government

Servants" Conduct Rules, it may be pointed out that Rules 12 does not constitute an absolute prohibition but merely prohibits an investment other

then an investment in immovable property which gives him such private interest in matters with which his public duties are connected as would be

likely in the opinion of the Local Government to embarrass or influence him in the discharge of his duties. This is only a rule for Government

servants" conduct and would not affect transactions between a Government servant and a private party, as has been held in Ramkrishna Trimbak

v. Narayan [1915] 40 Bom. 126, and by the Madras High Court in Manuel S. Lobo Vs. Nicholos Britto, .

12. There is no evidence, as a matter of fact, on the record of this case to show what position the plaintiff, who is now a pensioner, occupied, and

supposing that he was a clerk in the post office or a teacher in a school, the holding of shares in a local bank would not possibly give him such

private interest in matters connected with his public duties as would embarrass or influence him in the discharge of those duties. In view of the

rulings to which I have referred, there can be no question of Rule 12 rendering the transaction with the bank void.

13. The only remaining question is one of limitation. That has not been expressly dealt with by the lower appellate Court, though it is dealt with by

the first Court. The suit is governed by Article 120, being a suit for a declaration that the shares are the property of the plaintiff and not of his son.

The period from which limitation under Article 120 is to be reckoned is, of course, in view of the nature of the article, the date when the right to

sue accrued. The first Court, in dealing with this matter, has held that the right to sue accrued when the bank refused to grant the plaintiff"s request

to enter his name in the register of shareholders on 6th June 1918. It has now been argued that the receipt of the dividends by the son for eight

years up to his death in 1922 would furnish a starting point of limitation. That point also does not seem to have been made in the Courts below.

The learned Judge of the appellate Court has referred on p. 2 to the bank''s refusal by Ex. 57 to issue a consolidated certificate for the shares in

dispute and for twenty two other shares purchased by the plaintiff in May 1918. The rejection was on 6th June 19l8. It was only after the plaintiff

served the bank with a notice calling upon the bank not to pay the dividends to the son and tolling them that the transaction was benami and that ho

was going to file a suit for such a declaration, that the bank advanced money to the son on the joint security of the shares and of one of his clerks,

and even before us it has been admitted on behalf of the appellant that the question of estoppel does not arise. Otherwise, there would have been

the question of estoppel inasmuch as the shares were bought by the plaintiff in the name of the son. In these circumstances, I think that the right to

sue must be taken to have accrued at the time when the bank in June 1918 definitely refused to enter the name of the plaintiff as the shareholder in

respect of these shares along with the other shares purchased by him, and this being so, the suit is not barred by limitation.

14. At the fag end of the case in reply the learned advocate for the appellant has raised the question Under Sections 29 and 33, Companies Act,

as to the bank not recognizing any trust. There is no evidence on the record, but we assume that the bank is registered under the Companies Act,

and therefore Under Sections 29 and 33, Companies Act, the bank is not obliged to recognize a trust, but that would not prevent the Court from

recognizing a trust in a suit in which evidence of the trust is forthcoming and that is done by the Chancery Court in England. I may refer to the case

of Binney v. The Ince Hall Coal & Cannel Company [1866] 35 L.J. Ch. 363 and also to the case of Bank of N.T. Butterfield & Son Ltd. v.

Golinsky [1926] A.C. 733. I find these cases in. Dr. Khergamvala''s Indian Companies Act, Edn. 2, p. 48. In these circumstances, I think there is

no reason why the plaintiff should not be considered to be the owner of these shares and should not be given the declaration which he seeks.

15. I am of opinion therefore that this appeal should be dismissed with costs.