

Seth Motilal Hirabhai and others - - - - *Appellant*

v.

Bai Mani - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 5TH DECEMBER, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD ATKINSON.

MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by MR. AMEER ALI.*]

This appeal arises out of proceedings in execution of a decree made by the Subordinate Judge of Ahmedabad on the 28th September, 1915, which was affirmed by the High Court of Bombay on the 26th June, 1917.

The circumstances that gave rise to this litigation are simple. It appears that one Achratlal had purchased 48 shares of Rs. 1,000 each and 48 sub-shares at Rs. 500 each issued by a company which carried on business in Ahmedabad under the name of The Ahmedabad Ginning and Manufacturing Company. The purchase was made in the name of a person named Girdharlal Dalpat Ram. This Girdharlal was the nephew of a woman called Bai Gulab, who is said to have been under the protection of Achratlal. In the year 1883 a controversy arose between Achratlal and Girdharlal as to the real ownership of the 48 Rs. 1,000 shares and the 48 Rs. 500 sub-shares. Achratlal alleged that Girdharlal was only his *benamider* and that in fact he was the real beneficial owner of the said shares. The contest was settled between

Achratlal and Girdharlal on the 18th July, 1883. On that date an agreement was entered into by which it was agreed that 24 shares of Rs. 1,000 each and 24 sub-shares of Rs. 500 each were to be transferred to Achratlal under certain conditions. The remaining 24 shares of Rs. 1,000 and the 24 sub-shares of Rs. 500 were allowed to remain in the name of Girdharlal, subject to the following among other conditions :—

“ That during the lifetime of Achratlal and Gulab, Girdharlal should not sell or mortgage the same without their consent, (2) that out of the amount to be received by Girdharlal as the dividend in respect thereof (excluding such shares as might have been sold with their consent) he was to retain for himself Rs. 1,100 and hand over the balance, if any, to Achratlal and Gulab or the survivor of them, and (3) that after the death of both of those persons the shares were to belong to Girdharlal absolutely.”

Shortly after the settlement Girdharlal appears to have got into financial difficulties and in September, 1883, Achratlal advanced him Rs. 7,500 without interest on the pledge by Girdharlal of five shares out of the 24 shares that had been allotted to him in his own right, consisting of Nos. 266-270 each of Rs. 1,000 and five sub-shares of Rs. 500 each corresponding thereto. These shares, which were pledged to Achratlal, were transferred to his name as mortgagee or pledgee thereof. Achratlal died two years after. Before his death, on the 12th February, 1885, Achratlal appointed by his will certain trustees, five in number, to carry out the directions of his will ; one of these trustees was Bai Gulab.

In 1886 the Company passed certain special resolutions to the effect that its capital should be increased by the issue of 350 shares of Rs. 1,000 and 350 sub-shares of Rs. 500, to be called “ B ” shares. And it was provided that those of the present shareholders who had a whole share of Rs. 1,000 should be given one whole share of Rs. 1,000 of the “ B ” capital, and similarly with regard to the sub-share. The second resolution provided :—

“ That if in respect of these shares, a call be required to be made, the same be made in this manner that a call of half of the amount of the call which would be made in respect of a whole share, is made in the case of a half-share of Rs. 500.”

The third resolution was as follows :—

“ That until all the calls in respect of the ‘ B ’ capital are completed (? paid up), the dividend which is distributed every six months out of the earnings (? profits) be distributed on this understanding that a sum is to be deducted for depreciation in accordance with the provisions of the deed and a portion representing two annas (in the rupee), out of the actual (? net) earnings, is to be set apart for the Reserve (fund) and the remaining amount is to be distributed among the present shareholders as dividend.”

The fourth resolution is in these terms :—

“ That at the time of the declaration of the dividend as stated in the above clause, there should be an understanding that interest (? dividend) at the rate of (*i.e.*, amounting to) 6 per cent. is to be paid to the shareholders in cash and that the remainder is to be entered and acknowledged in the share certificate (as paid) on account of call.”

Girdharlal appears to have been unable to carry out his obligation under the agreement of 1883, and had not paid to Bai Gulab the dividends he had undertaken to pay her out of the income of the shares he had pledged to Achratlal, and accordingly an arrangement was entered into between him and the trustees of Achratlal under which they advanced him a sum of Rs. 4,439, out of which they paid the dividends to Bai Gulab and debited Girdharlal with the amount thereof. The trustees have remained in possession of the shares pledged with Achratlal collecting the dividends and paid the value to Bai Gulab as provided in the old arrangement. They appear also to have received the "B" shares which were issued under the resolutions adopted in September, 1886, by the directors of the Company.

It is unnecessary to refer to certain other arrangements which were entered into between Girdharlal and Bai Gulab and the trustees as they do not bear directly on the present controversy.

Girdharlal died in 1892. The plaintiff in the suit before the High Court, who is the present respondent, is his daughter and heiress. She brought a suit in 1913 in the Court of the First Class Subordinate Judge of Ahmedabad against the five trustees of Achratlal's will, including Bai Gulab, for the redemption of the pledged shares "together with all the issues thereof that there may be at present."

The trustees (the defendants) in their defence to the plaintiff's action raised various questions which were decided by the High Court in the decision arrived at in 1917. No reference was made by the trustees in their defence to the "B" shares which they had obtained from the Company and which they held at the time, nor was any specific reference made to these "B" shares in the judgments of the Subordinate Judge and the High Court.

On the 20th February, 1918, the respondent, Girdharlal's daughter, applied to the Subordinate Judge of Ahmedabad for the execution of the decree passed in her favour on the 28th September, 1915, and which as already stated was affirmed by the High Court in June, 1917. Her application was to the effect that the trustees might be ordered to transfer to her the said five shares mentioned in the decree bearing Nos. 266-270, "together with all sorts of 'Bachan' (issues) appertaining to the same," and she brought to the Court the amount she was directed to pay for the redemption of the mortgaged shares.

The trustees admitted that she was entitled to redeem the "A" shares bearing Nos. 266-270 and their "Bachan" existing at the time of the mortgage, but denied her right to the "B" shares.

Bai Gulab died during the course of these proceedings, and one Harilal, who styled himself the trustee of Bai Gulab, was placed on the record on the 18th July, 1918. His case is that he was by virtue of Bai Gulab's right entitled to the "B" shares as representing dividends to which she was entitled in her lifetime.

On this state of facts two questions arose for determination in the Courts in India. First, whether the plaintiff was entitled to proceed under section 47 of the Code of Civil Procedure, or whether she was bound to bring a separate action for the relief she was seeking. Secondly, whether the "B" shares which were held by the trustees were in fact the "Bachan" of the original shares called "A" shares. Both the Subordinate Judge and the High Court have held that the plaintiff was entitled to proceed under section 47 and that in fact the "B" shares were included in her original claim as "accretions" to the "A" shares, the word "issue" being wide enough to cover the claim.

On appeal before His Majesty in Council the contentions advanced by the trustees have been repeated with some force. In their Lordships' opinion the section 47 of the Code of Civil Procedure referred to above covers fully the present controversy. The section runs thus :—

"All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit."

Every matter relating to the "execution, discharge or satisfaction" of the decree has thus to be dealt with in the execution proceedings. The new subsection, which runs thus :—

"The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court fees,"

gives to the Court the power of converting an application into a suit or a suit into an application. It is not necessary, however, to lay stress on this particular provision, as the first section abundantly covers the question in debate.

The question is whether or not by the word "Bachan" the "B" shares are included in the claim. The object of the proceeding is to have this question determined upon considerations which necessarily are connected with the original case. In that view the application appears to their Lordships to be fully competent under section 47. The main question, however, remains, viz., whether the plaintiff is entitled to redeem the "B" shares. It has been objected that in the present proceedings the rights of Bai Gulab cannot be properly adjudicated. In their Lordships' opinion any declaration made in these proceedings cannot affect the right (if any) of Bai Gulab to the shares in dispute. It is quite competent for her personal representative, she having died, to bring an action for the ascertainment of her rights. But it is equally clear that the mortgagees have no right to withhold the "B" shares from the plaintiff. The Ginning and Manufacturing Company compulsorily capitalised the excess profits after payment of dividends of 6 per cent. The company was perfectly competent to make such capitalisation and there is nothing to show that it was invalid in any way. These shares were received

by the trustees, as arising out of and appertaining to the original "A" shares, and it is impossible to contend that the right to these shares could be differentiated from the right to the "A" shares. It has been objected that the word "accretion" applied by the Subordinate Judge and the High Court in respect of the "B" shares does not apply to moveable property. It may be that the word "accretion" is not quite appropriate to moveable property. But section 163 of the Indian Contract Act, (Act IX of 1872) is clear on the point. It declares :—

"In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed."

These shares are clearly accessions to the shares expressly pledged or hypothecated, and the pledgor or his representative, the present plaintiff, is entitled to recover the same.

Mr. Justice Shah, one of the Judges in the Appellate Court, in a well balanced judgment has held as follows :—

"It is clear that the old shares carried with them the right to the allotment of the new shares. For instance, it is difficult to hold that if the shares had not been mortgaged and transferred to Achratlal and had continued in the name of Girdharlal, the new shares could have been or should have been issued to Achratlal as part of the profits of the old shares, and it is not suggested on behalf of the defendants that in respect of the remaining 19 shares or such of them as continued in the name of Girdharlal, the trustees of Achratlal have or could have claimed the shares of the new capital 'B' issued to Girdharlal as part of the dividends which were claimable by them under the settlement. The right to be allotted the new shares went with the old shares ; and I find nothing on the record to support the view that the new shares formed part of the dividends in respect of the old shares. The evidence as to how the calls were received is not clear ; but it seems to me to be a fair inference under the circumstances that the profits of the Company were capitalised and that the new shares were allotted to the holders of the old shares as part of the capital and did not represent the dividends on the old shares. At any rate the trustees have produced no evidence to show that that is not the correct inference. On the contrary their own statement of the profits received shows that the new shares were not treated as part of the dividends received on the old shares."

Their Lordships concur generally with the conclusions arrived at by the High Court, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

SETH MOTILAL HIRABHAI AND OTHERS

o.

BAI MANI

DELIVERED BY MR. AMEER ALI.

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