

APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri and Mr. Justice
Devadoss.*

NAGABHUSHANAM AND FOUR OTHERS (PLAINTIFFS),
APPELLANTS,

1922,
January, 24.

v.

RAMACHANDRA RAO AND THREE OTHERS (DEFENDANTS
1, 2, 4 AND 5), RESPONDENTS.*

*Indian Companies Act (VI of 1882), Sch. A, Table A—
Articles of Association of a Limited Company—Transfer of
shares to be effected by deed executed both by transferor and
transferee—Transfer only by transferor, effect of, as against
auction purchaser.*

Where a transfer of shares in a Limited Company is required by law or by the articles of Association of the Company to be made only by a deed executed both by the transferor and the transferee in the prescribed form,

Held, that a deed of transfer executed by the transferor alone did not pass to the transferee the title to the shares and that an auction-purchaser under a subsequent attachment and sale of the shares was entitled to be registered as owner in preference to the private purchaser.

SECOND APPEAL against the decree of J.J. COTTON, District Judge of Kistna at Masulipatam, in Appeal Suti No. 240 of 1918, preferred against the decree of K. KRISHNAMA ACHARIYAN, Temporary Subordinate Judge of Masulipatam, in Original Suit No. 63 of 1917.

The following is the statement of facts taken from the judgment of KUMARASWAMI SASTRI, J. :

“One Venkatasubba Rao owned shares in Sri Krishna Cotton Press Co., Ltd., Guntur, Sri Krishna Jute and Cotton Mills Co., Ltd., Ellore, Bezwada Tripurasundari Cotton Press Co., Ltd., Bezwada and Sri Krishna Rice Mill Co., at

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Masulipatam. He was indebted to Thadipalli Venkatanarayana-
ayya and in consideration of the money due to him he executed
a deed of transfer, Exhibit L, dated 20th April 1912, whereby
he transferred the shares mentioned in that document for a sum
of Rs. 3,000. The deed is in the usual form and is signed by
Venkatasubba Rao alone. Notice was given of this assignment
to the various Companies whose shares were transferred, but the
transferee was not registered as a shareholder owing to objection
being taken as to the form of the transfer not complying with
the articles of association and owing to prohibitory orders
having been received by the Companies in respect of the shares.
It appears that after the sale and before notice to the Companies
these shares were attached by prohibitory orders in execution of
decrees against the transferor and they were subsequently
sold in execution and purchased by strangers."

The private purchaser of the shares under the deed
of assignment brought this suit for a declaration of his
right to the shares and of the invalidity of the attach-
ment and sale thereof by the Court. The defendant, viz.,
the auction purchaser, pleaded that his purchase alone
was valid and that the assignment to the plaintiff did
not confer on the plaintiff any valid title to the shares.
The Court of first instance, viz., the Subordinate Judge,
allowed the suit. On appeal by the defendants the
District Judge reversed the same and dismissed the suit.
Thereupon the plaintiff preferred this Second Appeal to
the High Court.

P. Narayanamurti for appellants.—The articles of
association are not mandatory but only directory. It is
not necessary to observe the prescribed form. Both in
law and in equity an assignment by the owner alone is
sufficient to make the transferee the owner of the shares.
The articles in this case give absolute right to have the
transferee's name registered on such a transfer. Of two
persons who are both unregistered transferees, the
prior in date prevails: 5, Halsbury's Laws of England,

pages 191, 197, *Moore v. North Western Bank*(1). Even without a transfer deed a pledge of the shares is good. Earlier pledge prevails: *Bradford Banking Company v. Briggs*(2).

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T. M. Krishnaswami Ayyar, with *T. S. Raghunatha Rao* and *Y. Suryanarayana*, for respondents.—The shares can be transferred only in the manner prescribed by law. Table A, clause (8), and articles of the Indian Companies Act (VI of 1882) govern this case. They prescribed that these shares can be transferred only by a deed of transfer executed by both the parties. A transfer in such legally prescribed method alone is effectual to pass the title in the shares: *Young v. Mayor of Royal Leamington Spa*(3), *The Liverpool Borough Bank v. Turner*(4), *McEuen v. West London Wharves and Warehouses Company*(5), *Kurri Veerareddi v. Kurri Bapireddi*(6), *Ramanathan v. Ranganathan*(7), *Bhavan Mulji v. Kavasji Jehangir Jasawala*(8), Maxwell on Interpretation of Statutes, Sixth Edition, page 650, *Torkington v. Magee*(9) and section 137 of the Transfer of Property Act. Where there has been an attachment of the shares, the Civil Procedure Code prohibits the officers of the Company from transferring the shares to any one but the purchaser under the attachment. Until the private transfer is registered in the books of the Company, the private transferee is not the owner of the shares. Though there is a discretion in the officers of the Company to register a private transferee, the Company has no option in registering a Court purchaser especially when he had done all that he had to

(1) [1891] 2 Ch., 599.

(2) (1887) 12 A.C., 29.

(3) (1883) 8 App. Cas., 517.

(4) (1860) 2 De. G. & J., 502; s.c., 45 E. R., 715.

(5) (1871) 6 Ch. Ap., 655, 663.

(6) (1906) I.L.R., 29 Mad., 336 (F.B.), 349.

(7) (1917) I.L.R., 40 Mad., 1134, 1169

(8) (1878) I.L.R., 2 Bom., 542.

(9) [1902] 2 K.B., 427, 430.

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do by way of informing the Company of his purchase in Court auction : *Société Générale de Paris v. Walker*(1).

KUMARASWAMI SASTRI, J.—These Appeals relate to the validity of the transfer of certain shares in Limited Companies governed by the Indian Companies Act.

[His Lordship after stating the facts recited above continued as follows :]

The competition is between the auction purchasers at the Court sales and the transferee under the deed of assignment, Exhibit L.

As regards the shares held in limited companies, it is important to consider the provisions of the Civil Procedure Code as regards the attachment and sale of shares held by judgment-debtors in Companies governed by the Indian Companies Act. Order XXI, rule 46, enacts that in the case of a share in the capital of a Corporation attachment shall be made by a written order prohibiting the person in whose name the share may be standing from transferring the same or receiving any dividend thereon and a copy of the order being sent to the proper officer of the Corporation. Rule 76 provides that where the property to be sold is a share in a Corporation the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument of share through a broker. Rule 79, clause (3), provides that where the property sold is a share in a Corporation the delivery thereof shall be made by a written order of the Court prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the Corporation from permitting any such transfer or making any

such payment to any person except the purchaser. Rule 80 provides that where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document, or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party. In the present case the shares were attached by prohibitory orders in form required by the Code and they were sold and necessary notice was given to the companies concerned. So far therefore as the Court purchasers are concerned, it is clear that the provisions of the law necessary to transfer the shares to them have been complied with; the only formality remaining is the actual transfer of the shares in their names in the Companies' books. Both under the Companies Act and under the Articles of Association of the various Companies the Directors have a discretion to transfer the shares in the names of the auction purchasers. It is argued by Mr. Krishnaswami Ayyar that when there is a Court sale and a purchase under it, there is no discretion left for the Directors and that they are bound to transfer the shares. It is argued by Mr. Narayanamurti, for the other side, that there is nothing in the Companies Act or the Articles of Association to make any difference between private sales and sales in execution of decrees, the necessity for the sanction of the Directors being to prevent undesirable persons or debtors of the Company from getting transfers of shares. The reason applies with equal force to private or Court purchasers. We agree with the view taken in *Manilal Brijlal v. The Gordhan Spinning and Manufacturing Co.*(1), that

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(1) (1917) L.L.R., 41 Bom., 76.

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there is still a discretion in the Directors to recognize or not purchasers in execution of decrees. So far as the transferee from the share-holder under Exhibit L is concerned, it is clear that the document of transfer does not conform with the provisions of the Companies Act or with the Articles of Association of the Companies. The present case is governed by the Companies Act of 1882 and by the Articles of Association of the various Companies. It is clear that both under the Act and the Articles of Association the instrument or transfer of the shares of the Company has to be executed both by the transferor and transferee and in the form prescribed. So far as the transferee is concerned the form contains a statement by the transferee that he agrees to take the shares subject to the condition on which the vendor himself holds the shares. The Act also provides that the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the Companies' registers (see Table A, First Schedule). Section 44 of the Companies Act of 1882 enacts that the share or other interest of any members in a Company share is moveable property capable of being transferred in manner provided by the regulations of a Company. As observed by CHANNELL, J., in *Torkington v. Magee*(1), shares which can only be transferred in manner provided for in the Companies Act are not choses in action. Section 137 of the Transfer of Property Act excepts shares in Companies from the Chapter dealing with transfers of actionable claim. Section 26 of the English Act of 1866 requires that the deed of transfer should be executed by the transferor and transferee, and duly entered in the register of transfers, while Article 18 of Table A of the English Companies Act of 1908

(1) [1902] 2 K.B., 427.

makes a slight alteration and directs that the instrument of transfer should be executed both by the transferor and transferee, and states that the transferor shall be deemed to remain the holder of the share until the name of the transferee shall be entered in the register. So that, both under the English and Indian law the deed of transfer has to be executed both by the transferor and transferee. The question therefore is whether a deed not complying with the terms of the Act, and the Articles of Association, is valid to transfer shares as against a person who has acquired the right to them by a Court-sale in manner required by the provisions of the Civil Procedure Code. The contention for the Court purchaser is that where the law prescribes a mode of transfer, that is the only mode which is capable of passing property and that any other mode, although it may as between the transferor and transferee give him a right to complete his purchase by compelling the transferor to execute the necessary transfer as required by the Act, will not avail against third parties. For the private transferee it is contended that his acquiring an equitable title is good, not only against the transferor but against third persons also. We are of opinion that the contention of the Court purchaser is well founded and that where the law prescribes a mode of transfer compliance with that mode is necessary before property can pass so as to confer title against third persons. In *McEuen v. West London Wharves and Warehouses Company*(1), where there was a transfer of shares but not in manner required by Act of Parliament, it was held that the transfer of those shares in any other form would at least amount to an equitable contract and that, even if the Company act upon the transfer and receive payments from the person

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(1) (1871) 6 Ch. Ap., 655.

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who entered into that equitable contract and issue documents and treat him as a share-holder, it would not have the effect of making him a real share-holder. SIR GEORGE MELLISH, L.J., observed :

" If a share-holder in a company whose shares by Act of Parliament can only be transferred by deed and by an alteration in the register, thinks fit to sell them in another way, which can only make an equitable contract at most and the Company so far act upon it that they receive payments from the person who has entered into that equitable contract and perhaps issue documents treating him as their share-holder and calling him their share-holder does that have the effect of making him the real share-holder ? Now, it is obvious that if we were to hold that it had that effect, the consequence would be that the provisions of the Act of Parliament that shares can only be transferred by deed would be entirely eluded ; and any person who examined the register whether a creditor who wished to know who the share-holders were in the company or a share-holder who wished to know who his company share-holders were, would be entirely deceived. None of the numerous cases cited appear to me to establish the proposition that, when a person has once become a legal share-holder, he can be freed from his liability to pay the calls, simply by showing that he has made a contract which is void at law, but possibly may amount to an assignment in equity ; and that the company to a certain extent has adopted that contract."

In *Moore v. North Western Bank*(1) where the competition was between two persons claiming title to shares registered in the name of a third person in a Company ROMER, J., observed :

" As between two persons claiming title to shares in a company like this, which are registered in the name of a third party, priority of title prevails unless the claimant second in point of time can show that as between himself and the company, before the company received notice of the claim of the first claimant he, the second claimant has acquired the full status of a share-holder or at any rate that all

(1) [1891] 2 Ch., 599.

formalities have been complied with and that nothing more than some purely ministerial act remains to be done by the company, which as between the company and the second claimant the company could not have refused to do forthwith; so that as between himself and the company he may be said to have acquired, in the words of Lord SELBORNE, a present absolute unconditional right to have the transfer registered before the company was informed of the existence of a better title. For that proposition the case of *Société Générale de Paris v. Walker* (1) and *Roots v. Williamson*(2) are sufficient authorities and I need not refer to the cases cited by the defendants in argument which were decided previously to *Société Générale de Paris v. Walker*(3).”

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This case has been followed in *R. D. Sethna v. National Bank of India*(3), and the principle applied to the facts of that case. *Société Générale de Paris v. Walker* (1) is also a case of competition between two transferees neither of whom were registered in the books of the Company, and it was held that the person who had a prior equitable title was entitled to preference. Lord SELBORNE after observing that a merely inchoate title by an unregistered transfer would not for the purpose of the case be equivalent to a legal estate in the shares and be sufficient to give priority against a prior transferee who had given notice of the prior equitable title to the Company so as to compel the Company to register the shares in the name of the applicant observed as follows :

“If indeed all necessary conditions had been fulfilled to give the transferee as between himself and the Company, a present absolute unconditional right to have the transfer registered before the Company was informed of the existence of a better title, the case might be different,” and on the facts of the case he held that no such right was acquired by the subsequent transferee so as to give him priority. Where the law prescribes a mode of

(1) (1885) 11 App. Cas., 20.

(2) (1888) 38 Ch. D., 485.

(3) (1912) I.L.R., 36 Bom., 334.

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transfer any transfer otherwise than by the manner prescribed by law will not confer a valid title. So far as the Madras High Court is concerned it has set its face against what may be called the equitable construction of Statutes. In *Kurri Veerareddi v. Kurri Bapireddi*(1), it was held that the provisions of section 54 of the Transfer of Property Act which provides for the mode of transfer of immoveable property are imperative and that Courts would not be justified in disregarding them on equitable grounds. This decision was followed by another Full Bench of this Court in *Ramanathan v. Ranganathan*(2), where the observations of the Privy Council in *East Indian Railway Company v. Changai Khan*(3), and *Venkayyamma Rao v. Appa Rao*(4), are explained as not overruling the principle laid down in *Kurri Veerareddi v. Kurri Bapireddi*(1). Though a different view has been taken in Calcutta and Bombay in *Akbar Fakir v. Intail Sayal*(5), *Syankisor De v. Dines Chandra Bhattacharyya*(6) and *Bapu Apaji v. Kashinath Sadoba*(7), the decision of our High Court is binding on us and we do not think we can hold that a transfer otherwise than as is provided by the Companies Act and the Articles of Association can be valid. Treating the right of the private transferee therefore as merely a right in equity to compel the vendor to execute a proper conveyance and the transaction evidenced by the transfer as merely an agreement to convey capable of being perfected into an absolute conveyance by complying with the rules laid down in the Companies Act and the Articles of Association, the question is whether he has any priority over the auction purchaser in a Court sale who has given notice

(1) (1906) I.L.R., 29 Mad., 336 (F.B.). (2) (1917) I.L.R., 40 Mad., 1134.

(3) (1915) I.L.R., 42 Calc., 888.

(4) (1916) I.L.R., 39 Mad., 509 (P.C.).

(5) (1915) 29 I.C., 707.

(6) (1919) 31 C.L.J., 75

(7) (1917) I.L.R., 41 Bom., 438 (F.B.).

to the Company of his purchase. We do not think he has any such priority.

As regards purchasers in Court sales where the sale is confirmed and the provisions of the Act are complied with there is nothing further to be done by the transferee or by the Court. When an order is issued under sub-clause (3), rule 79, Order XXI, Civil Procedure Code, the Company acting through the Secretary or proper officer could not make a transfer of the shares to anybody else. It has either to recognize the transfer or refuse to recognize it. Form 34 of Appendix E of the Civil Procedure Code is the prohibitory order contemplated in rule 79, clause (3). It is addressed to the Secretary of the Company and recites the fact of the purchase by the auction purchaser of the shares specified in the order and prohibits the Company from making any transfer of the shares to any person except the purchaser, or from receiving any dividend thereon, or from permitting any transfer, or from making any payments to any person except the purchaser. It is issued under the seal of the Court and signed by the Judge.

We do not think that on the confirmation of the sale and the issue of the order any further steps are required to be taken by the Code. There is no provision in the Code which requires the execution of any further documents by the Court. In the view we take of the case the Court purchaser in the present case has taken all the necessary steps and brought matters to a stage where all that remains is for the Company to signify or withhold its assent and he is therefore entitled to priority over the transferee from the share-holder who has not got an assignment in manner required by law and is merely in the position of a person who holds an equitable contract. In Second Appeal No. 1719 there is the further fact that the Court purchaser applied for the

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registration of the transfer and got his transfer recognized by the Company.

Second Appeals Nos. 1719 and 1773 of 1919 are allowed with costs throughout and Second Appeal No. 1626 of 1919 is dismissed with costs of second defendant throughout.

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DEVADOSS, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Venkatasubba Rao.

SANKUNNI (DEFENDANT), APPELLANT,

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SWAMINATHA PATTAR (PLAINTIFF), RESPONDENT. *

Headmaster and pupil—Unruly conduct of pupil—Power of headmaster to inflict moderate corporal punishment—Rule 59 A of Educational Rules, effect of.

It is within the powers of the head of a school to inflict moderate and reasonable punishment on a boy, such as a couple of smacks on the cheek, for correcting unruly conduct or breaches of discipline.

The Educational Rules which provide that "corporal punishment shall not be inflicted except in a case of moral delinquency or flagrant insubordination and shall be limited to six cuts on the hand" do not prohibit or regulate the petty corrections such as that in question which are necessary for maintaining the ordinary discipline of a school.

APPEAL against the decree of C. V. KRISHNASWAMI AYYAR, Subordinate Judge of South Malabar at Palghat, in Original Suit No. 18 of 1918.

* Appeal Suit No. 168 of 1920.