Before Mr. Justice Walsh and Mr. Justice Wallach.

UNION INDIAN SUGAR MILLS COMPANY, LIMITED (OPPOSITE PARTY) *v.* JAI DEO (PETITIONER.)*

1921 *August*, 10.

Act No. VII of 1913, *(Indian Companies Act), section* 38—*Company—Application for rectification of share register—Question of title—Discretionary power of court to refuse to decide such question—Appeal—Procedure* re *transfer of shares in Company.*

Held on a construction of section 38 of the Indian Companies Act, 1913, that the District Judge is not obliged to decide a question of title raised in a proceeding before him under the section; but if he does decide such a question, or if he directs an issue to be tried, in either case an appeal from the decision will lie in the manner provided by section 100 of the Code of Civil Procedure.

Observations on the powers and duties of a Company in connection with the transfer of its shares and corresponding alterations in the share register of the Company.

THE facts of the case are fully set forth in the judgment of the Court.

Mr. *B. E. O'Conor* and Dr. *Kailas Nath Katju* for the appellant.

Dr. *Surendra Nath Sen* and Babu *Saila Nath Mukerji* for the respondent.

WALSH and WALLACH, JJ.:—This is a simple matter. Certain property, including the shares in question in a limited liability company known as the Union Indian Sugar Mills Co., Ltd., having its registered office in Cawnpore, was held by a family, jointly. It is alleged by one Debi Dat, who happens to be at this time the managing director of the company, with of course a commanding influence in the managment of its affairs, that in the year 1918 he separated from the branches of the family whom we will refer to compendiously as the respondents, and that an elaborate partition was carried out, with the result that the shares now in dispute were made over to him as part of his share. Although the evidence of the fact has never been put on the record, either by sworn testimony or by formal admission so that one could say that it was properly on the record in the way in which we are accustomed to use that language, it appears from the surrounding circumstances that what he did was, having the share certificates in his possession,

*First Appeal No. 11 of 1921, from an order of E. H. Ashworth, District Judge of Cawnpore, dated the 3rd of January, 1921.

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as would naturally be the case if his story is true, he did not trouble himself very much about the state of the register of shareholders in the company's book. At the time of the partition, various blocks of these shares were registered in the names of the six different individuals who now figure as respondents. Some time afterwards, namely, on the 2nd day of January, 1919, Debi Dat appears to have woke up and to have carried out the partition in his own interest, so far as it affected these shares, by the following proceeding. He was armed with a *bahi-khata*, which has figured very largely in the learned Judge's judgment and therefore cannot be treated as non-existent, although it certainly has not been formally proved, which purported to record the result of the partition signed by some of the predecessors of the respondents, and authorized Debi Dat to transfer or deal with, or otherwise effectually carry out the partition so far as the shares were concerned. He was also armed with the certificates, as we have said. He preferred, for reasons into which it is no business of ours to inquire, that his alleged holding should be distributed between various nominees of his own, possibly as rewards to these doubtless deserving individuals, possibly as an inducement to get votes at the annual meeting in case Debi Dat required the support of the shareholders. He therefore filled up the formal transfers with the names of his nominees as transferees, and executed the formal transfers in the names of the alleged transferors "by the pen of Debi Dat". He then approached the company, which in other words means the paid secretary, and it can surprise nobody in connection with the case that at his request the company made the necessary alterations in the register of shareholders Now if these shares had been lawfully sold or allotted to Debi Dat for good consideration by the respondents, nobody can complain of that transaction. If, on the other, hand they have never been partitioned or allotted in favour of Debi Dut and are the property of the respondents, he was perpetrating a gross swindle. So long as that question remains undecided, there is a question of title between shareholders of the company on the one hand, and alleged shareholders on the other. So far as the company is concerned we have been unable to

discover any question between the respondents as the former registered holders of the shares and the company, although we have constantly called upon the respondent's advocate to formulate such question. There would be a question, if the present respondents and former owners were still the owners of the shares, and a very grave question, but it would be merged in the question of title which we have already described between the two sets of contending owners. Although the articles of association prescribe certain conditions which have to be complied with to entitle a transferee, or proposing member of a company, to get his name on to the company's register as a member of the company, those are matters which the company may or may not insist upon. If the company insists upon them and an alleged transferee is not recognized as such by the company, and the company refuses to register his name, undoubtedly a question arises between him and the company, and he may apply under section 38 and compel the company to register his name; and then the question will arise whether he has complied with the articles or not, and whether the company has a right to insist upon conformity with the articles. But a company has always a right to accept such evidence as satisfies its mind that an applicant is really the owner and a real transferee and entitled to be registered, and it would be surprising if the company did not accept the word of its own managing director, especially if he produced any evidence in support of it.

There are some observations in the judgment, and some observations have been addressed to us in support thereof, which are so startling from the ordinary business point of view of the working of a company, that we find it difficult to deal with them in the course of this judgment. To suggest, as the learned Judge seems to suggest, that upon an alleged transferee presenting himself and his material to the company for registration, the company is not to do anything until it has given notice to the transferor and is to constitute itself an amateur court of inquiry with power to hear witnesses and examine documents, and goodness knows what, is really unreasonable, and if it were conceivable it would bring work in many companies to a standstill. Substantial companies in which shares are constantly

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changing hands would have the whole of their time taken up and their offices occupied by struggling transferors and transferees awaiting judgment. Dr. *Sen* seems to make it a grievance that the act of January, 1919, was done "behind his back". We are unable to understand what bearing this suggestion has. Of course it was done behind his back. The duty of a transferee is to get his shares registered and the name of the transferor removed from the register of shareholders. The duty obviously lies upon somebody. Nothing would be more embarrassing to an ordinary shareholder, after he has sold his share and forgotten all about it, than to find that his name still figured upon the register of shareholders, possibly exposing him to unforeseen liabilities, and therefore the Act has gone out of its way to give the transferor a statutory right to apply for rectification if the transferee and the company neglect their obvious duty in the matter. Why Dr. *Sen* thinks that this section helps his argument we are at a loss to understand. In the circumstances abovementioned and bearing in mind these general observations, the present respondents, discovering that they were not summoned at the last annual meeting, and being refused permission to vote, made this application to the learned Judge for rectification of the register. If they had proved to the satisfaction of the learned Judge that they were the owners of the shares and that the assertion of the right if Debi Dat was a mere sham, they would have been entitled to succeed. If, on the other hand, the learned Judge had gone into evidence and examined the applicants' title and had decided against them, their application ought to have been dismissed. There was a *tertium quid*. The learned Judge was not bound, and some Judges have even expressed a doubt whether they are entitled, to decide in a proceeding of this kind a serious question of title. In England the matter seems to have been more or less set at rest by the decision in *Ex parte Shaw* (1), that "it is a matter of discretion whether the court or Judge will exercise the summary jurisdiction. In a complicated or doubtful case, the jurisdiction ought not to be exercised; but when the legal title in the applicant is clear the order ought to be made." It is possible that in

(1) (1877) 2 Q. B. D., 463.

view of the slight judicial controversy in England, the final proviso to section 38 was added in India which finds no place in the English legislation. However, the learned Judge elected not to decide the question of title; indeed he held that he could dispose of the matter without doing so, and it is sufficient to say for this purpose that no sworn testimony of any sort or kind was given. The most informal evidence was laid before the learned Judge. Both parties before us seem to be agreed that a suit is sooner or later inevitable. Therefore we come to the conclusion that the learned Judge was perfectly right on the material which he had before him in declining to adjudicate on the question of title. It is the latter part of his judgment, after he leaves that question, where we are unable to follow him. What he thought he was really deciding, or what he thought the real object of the section was, we are unable to say. He seems to have failed to consider whether the question which he was dealing with was a question as mentioned in sub-section (3) of section 38 between members, or one between alleged members on the one hand and the company on the other. Having felt himself unable, and having declined, to adjudicate on the question of title, the only thing to do was to dismiss the application. Indeed the application was bound to fail unless the applicants chose to prove their title. No wrong has been done them, no infringement of any right of theirs has been committed by the company. Assuming that they were not the rightful owners of these shares, if the application was made independently of that question, it was wholly misconceived. We should have been prepared, if that view of the question had been taken by the respondents, to treat this as a matter which had gone off in the wrong direction and to make the costs of both sides in both courts costs in the suit, but, having regard to the tenacious way in which the appeal has been resisted by the respondents, we must allow the appeal with costs in both courts.

The respondents took a preliminary objection to the hearing of the appeal. That point really has given us more trouble than any other in the case. The section is certainly drafted in a singular form which gives colour to the objection raised on behalf of the respondents. The language used is that the court

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"may direct an issue to be tried in which any question of law may be raised" The plain English of that provision would suggest that the intention was that the ordinary jurisdiction of the Civil Courts for the determination of questions of title was to be ousted, but that view does not seem to have been taken in India and we express no opinion about it. At any rate the parties before us are prepared to seek a decision from the civil courts by suit. It is to be observed that the language used is not that the court may direct an issue of law to be tried, but "may direct an issue", and it then goes on to say that in that issue any question of law may be raised. We think that means that the court may direct an issue on the question, for example, of title, and in such issue a question of law may be raised. It then goes on to provide that an appeal from a decision of such an issue shall lie in the same manner as directed by the Code of Civil Procedure. We must give an intelligible meaning to the section. The Legislature can hardly have meant that if the learned Judge himself decided the question of title involving difficult and important questions of law there should be no appeal, but that if he sent it to somebody else in the form of an issue, his decision on the issue should be appealable. We think that it must mean that the decision, as the result of the issue, is the decision of the court. The issue may be tried by the Subordinate Judge or the Munsif or even a vakil appointed for the purpose, but the order passed under the section resulting from the issue would be the decision of the court, and from such decision or rather from the decision of such an issue, whether tried by the Judge or somebody else, an appeal lies in the manner provided by section 100. That means that the right of appeal is limited, as it is in second appeal, to a point of law. Nobody hearing Dr. *Sen's* argument could seriously doubt that a question of law was involved in the hearing of this appeal. The learned Judge clearly misdirected himself. In our view an appeal lies.

Appeal allowed.