

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.SUNDAR

O.S.A.No.115 of 2012

- 1.Mangalam
- 2.Dr.R.Ganesh
- 3.P.Rammohan
- 4.V.Gopal
- 5.Sumathi Rathinakumar
- 6.Revathi Gopal

... Appellants/Defendants
10 to 15

Vs

1. Citrex Products Ltd.,
rep. by its Director V.Rajendran,
AJ 81, Anna Nagar,
Chennai-600 040.
2. R.Padma
3. R.Ganesh Raj,
rep. by his authorised Power of Attorney
Holder V.Rajendran
4. Rajeswari Sathish
5. R.Satish Raj
6. V.Rajendran
7. Usha Selvarathinam
8. P.Selvarathinam
9. M.Jeya
- 10.K.Mahalingaswamy
- 11.N.Ayyamperumal
- 12.Viswapriya Financial Service and Securities Limited,
rep. by its Managing Director R.Subramanian,
75/C 2nd Main Road, Gandhi Nagar,
Adyar, Chennai-600 020.
- 13.Custodial Services India (P) Ltd.,
rep. by its Director V.Gopal,
E-27, Anna Nagar East,
Chennai-600 102.

14.Long Short Investments (P) Ltd.,
rep. by Director V.Rengaswamy,
D1, 24, Desika Road, Mylapore,
Chennai-600 004.

15.Thamaraparani Investment Pvt. Ltd.,
rep. by its Director V.Gopal,
4/35, Swaminathan Nagar Extn
Kottivakkam, Chennai-600 041.

16.Vis Ram Financial Services Pvt Ltd.,
rep. by its Director P.Rammohan,
A-2 24 Desika Road,
Chennai-600 004.

17.K.Balasubramanian

18.R.Subramanian

19.M.Rathinakumar

20.S.Chandrasekar

21.Subiksha Trading Services Pvt Ltd.,
rep. by its Managing Director R.Subramanian,
No.99/5, MGR Nedunsalai,
Negalkeni, Chrompet,
Chennai-600 044.

22.Bala Deshpandey,
Nominee Director, Subhiksha Trading Pvt Ltd.,
ICICI Venture Fund Management Co Ltd.,
Raheja Plaza 4th Floor,
No.17, Commiserate Road,
D Souza Circle, Bangalore-560 025.

23.R.Hariharan

... Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side
Rules read with Clause 15 of Letters Patent against the order
dated 08.12.2011 made in Application No.5636 of 2011 in
C.S.No.51 of 2005 on the file of this Court.

For Appellant : Mr.R.Subramani
for
M/s.R.Murari

For Respondents : No Appearance

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Eleven plaintiffs have filed the suit against eighteen defendants, out of which the appellants are defendants 10 to 15. The suit makes out the following prayers:-

"(a) declaring that the pledge of the 900 shares belonging to Plaintiffs 2,3,5 to 11 in favour of the 2nd Defendant stands discharged and consequently direct the 2nd Defendant to return the 900 shares pledged by Plaintiffs 2,3,5 to 11.

(b) or in the alternative to declare that the transfer of the 900 shares belonging to the Plaintiffs 2,3,5 to 11 by the 2nd Defendant is null and void and not binding upon the Plaintiffs;

(c) to declare that Plaintiffs 2 to 6 continue to be the Directors of the 1st Plaintiff Company and Plaintiffs 2,3,5 to 11 continue to be the shareholders of the 1st Plaintiff Company and consequently restrain the Defendants their men and agents by means of a permanent injunction from in any manner interfering with the management of the 1st Plaintiff Company;

(d) for a declaration that the agreement of sale dated 2.6.1997 and 25.08.1995 is null and void and not binding upon the 1st Plaintiff Company;

(e) to pay costs of the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

2. In the aforesaid circumstances, after a lapse of six years, an application was filed by the appellants under Order 1, Rule 10 of the Code of Civil Procedure, 1908 to strike out the original first plaintiff from the array of parties, which has been dismissed by the impugned order dated 08.12.2011.

3. The learned Single Judge has opined that the application is misconceived and it is for the appellants to raise objection about the maintainability of the suit qua the first plaintiff for want of proper authorization and it would not give them the right to seek deletion of the name of the first plaintiff from the array of parties. It will be for the plaintiffs to prove that a valid resolution was passed in favour of the Director seeking to institute the suit on behalf of the first plaintiff.

4. The learned counsel for the appellants appearing before us submits that the application has been thrown out at the threshold as not maintainable and that the sixth plaintiff was disqualified from being the Director of any of the Private Limited Companies and thus, in any case, he could not have instituted the suit on behalf of the first plaintiff.

5. We are unable to accept the plea of the learned counsel for the appellants. The application has not been dismissed as not maintainable, but on merits. We find, the learned Single Judge has rightly opined that it is for the plaintiffs to prove their case qua the authorization in favour of the Director to institute the suit on behalf of the first plaintiff.

6. We have also re-produced the prayer clauses to show that in sum and substance also the dispute is as to who controls the first plaintiff Company, more specifically prayer (c).

7. We are informed by the learned counsel for the appellants that the suit is at the stage of framing of Issues.

8. We find no merit in this appeal and the same is dismissed, leaving the parties to bear their own costs.

9. The suit (C.S.No.51 of 2005) be listed before the Court for necessary direction as it is an old suit, so that the trial can proceed. The suit be listed before the roster Judge on 11.01.2017.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Swaminathan, Advocate, S.R.No.1084

O.S.A.No.115 of 2012

UG(CO)
CA(10/01/2017)