

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Ajoy Kumar Mukherjee

**FAT 539 OF 2017
CAN 9763 of 2017
CAN 2 of 2022**

**Kiran Devi Poddar
Versus
Sundaram Clayton Limited & Ors.**

For the Appellant : Mr. Siddhartha Banerjee, Adv.
Mr. Supratik Roy, Adv.
Mr. Soumajit Majumdar, Adv.

Hearing Concluded On : 3rd March, 2022

Judgment On : 30th March, 2022

Soumen Sen, J.: The appellant is aggrieved by the judgment and decree dated 19th August, 2017 by which the learned 12th Bench of City Civil Court at Calcutta dismissed the suit being T.S. No. 1525 of 2016 (Kiran Devi Poddar vs. Sundaram Clayton Limited and Ors.).

The plaintiff filed a suit for declaration and permanent injunction against the defendant.

Upon receiving the summons neither the defendants nor the substituted defendants of deceased defendant no.3 appeared before the trial court to contest the suit. Accordingly, the suit proceeded ex parte against all the defendants.

The suit is based on unusual facts and surrounded by suspicious circumstances.

The plaintiff alleged to have purchased 4 share certificates of 50 shares each, that is, 200 shares of M/s. TVS Motor Limited formerly known as TVS Suzuki Limited from Gouri Dutt Parmanandka on 2nd May, 1990 on payment of Rs.4000/- and received share transfer deed and certificate. The face value of each share Rs.10/- Gouri calimed to have executed Form 7B, Share Transfer Form, on 2nd May, 1990 in the name of the plaintiff in presence of the witness namely, Mr. Ramesh Mehta. On 20th January, 2011 Sundaram Clayton Limited (in short 'Sundaram'), Share Transfer Agents of TVS addressed a letter to Gouri requesting her to return the old share certificates of erstwhile TVS Suzuki Limited in lieu of new share certificates of TVS Motor Company Limited to be issued in her name. Since no response was received a reminder letter was issued on 25th July, 2011 requesting Gouri to forward the old share certificates within 14 days from the date of the said letter failing which Sundaram shall be constrained to transfer the said shares to "Unclaimed Suspense

Account” with one of the Depository Participants (DPS) in a dematerialized form.

The plaintiff alleged that there has been a series of letters exchanged between the plaintiff and Sundaram for revalidation of the 200 shares purchased by the plaintiff from Gouri but Sundaram refused to register in view of merger of TVS with Sundaram under a scheme of amalgamation sanctioned by Hon’ble High Court of Madras vide order dated 10th December, 1999 following which new shares were issued in the name of Gouri having distinctive Nos. 142880241 to 142882240, on 18th July, 2013 under share certificate no. 7974 for the aforesaid 2000 shares without surrender of the old share certificates nos. 71847 to 71850 aggregating to 2000 shares. These 2000 shares were subsequently transferred in favour of Arju Poddar on 20th May, 2015. The plaintiff requested Sundaram to stop transfer of shares in favour of Arju as the plaintiff is the rightful owner of the shares to which Sundaram responded stating that the plaintiff would be required to approach the Company Law Board/ Jurisdictional Court for getting appropriate order.

The plaintiff alleged that the defendants in collusion and connivance with each other practiced fraud upon the plaintiff causing huge financial loss and damages for which the defendants are liable to compensate.

The cause of action arose on 24th July, 2015.

In the suit the plaintiff has prayed for the following reliefs:

1. Decree for declaration that the plaintiff is entitled to get 2000+2000 shares converted original TVS Suzuki Ltd. Madras (TVS Motor Co. Ltd.) shares to be issued by the defendant no.1 and 2 and upon further declaration that the defendant no. 1, 2 and 3 have no right to transfer the shares in favour of defendant nos. 4 and 5 upon further declaration that the transfer of shares made in favour of 4 and 5 is forged and fraudulent and is not binding upon the plaintiff in the eye of law.
2. Mandatory injunction directing the defendant no. 1 and 2 to issue fresh shares as mentioned in favour of the plaintiff.
3. Decree for damages @ Rs.500/- per diem from the date of refusal to issue shares till the shares are issued.
4. Ad-interim order of injunction restraining the defendant nos. 1, 2 and 3 from taking any steps or further steps to provide unlawful gain to the defendant nos. 4 and 5 respectively since the shares have been illegally and unauthorizedly and in deceptive manner transferred in their names, pending disposal of the instant suit.
5. An order of injunction should also be passed restraining the Company Sundaram Clayton Limited that the shares of the petitioner should not be 'Demat' in the holding of Arju Poddar and Jitendra Kumar Poddar and not to pay any corporate benefit to them, pending disposal of the instant suit.
6. Ad-interim order by way of direction upon the Company Sundaram Clayton Limited to revalidate and/or cause revalidation of the shares certificate no. 071847, 071848, 071849 and 071850 with distinctive no. 8143788 to 8143887 to 8143888 to 8143987 with folio no. G-1289 of M/s. TVS Suzuki Ltd. pending disposal of the instant suit.
7. Cost of the suit and Advocate's fees.
8. Any other relief or reliefs to which the plaintiff may be found entitled to in law and equity.

One Alok Kumar Poddar deposed as PW1 on behalf of the plaintiff as a constituted attorney. He is the son of the plaintiff. The power of attorney was executed on 2nd March, 2017. The plaintiff exhibited 11 documents.

The oral and documentary evidence would show that the plaintiff purchased 200 shares through off market from the defendant no.3 for a consideration. The plaintiff never informed or intimated the defendant no.1 or 2 after the said purchase on 2nd May, 1990 as would appear from the letter of 1st June, 2015 addressed to the defendant no.1 (Exhibit 6 series). The plaintiff stated in paragraph 2 of the letter that the said shares could not be transferred within the validity period as the same was kept at an untraceable place. It is thus, admitted that the defendant nos. 1 and 2 had no knowledge about the purchase of the said shares from defendant no.3 until receipt of the letter dated 1st June, 2015. The plaintiff was also aware that validity of transfer of shares was already over by the time the plaintiff started communicating with the defendant no.1. The exhibit 9 series would show that the plaintiff had never brought to the notice of the defendant no.1 or 2 for almost 25 years in respect of transfer of shares in her name. She never made any request for transfer of the shares in her favour for the reasons best known to her. She did not even communicate about the alleged misplacement of the original share certificates until 7th July, 2015. Curiously the plaintiff did not immediately assert her right as shareholder nor had claimed any dividend for almost 25 years. On the contrary the plaintiff in paragraph 4 of the plaint refers

to the letter of Sundaram dated 25th July, 2011 and affirmed the said paragraph as true her knowledge. The plaintiff has not offered any acceptable and trustworthy explanation for not asserting her right for almost 25 years in relation to said shares. Even if, one assumes that plaintiff was unaware of the fact that the shares continued to remain in the name of Gouri even after alleged transfer, however, in 2011 she became aware of such fact but she did approach the said defendant no.1 or 2 with proper documents to record her name instead and place of Gouri. It is now claimed at the appellate stage that Gouri died sometimes in 1995.

During the lifetime of Gouri the plaintiff had never asserted her right in respect of the said shares. It appears from record that after merger of TVS Suzuki with Sundaram Auto in terms of the order of the Madras High Court dated 10th December, 1999 the company was renamed as TVS Suzuki Limited (TSL). TSL thereafter issued new shares to its shareholders in place of the old ones. It further appears on 7th November 2001 TVS Suzuki was again renamed as TVS Motor Company Limited and the company issued new share certificates for 2000 shares of Rs.1 each to shareholder Gouri in lieu of old certificate no. 71847 to 71850 and also issued 2000 bonus shares in the name of Gouri. It further appears from the record of the company that 2000 shares and 2000 bonus shares were transferred in the names of defendant nos. 4 and 5 after the said transfers lodged the shares.

In a declaratory suit the plaintiff has to establish his right, title and interest over in respect of the property in question.

The power of attorney holder cannot have any personal knowledge about the alleged purchase of shares or due execution of Form 7B. The execution of Form 7B was not proved. The witness named in the said Form was not examined. The stamp alleged to be the Registrar of Companies appear to be faint and of doubtful character. The Form 7B was not proved in accordance with law. When the plaintiff was alive and facts required to be proved are within the special knowledge of the plaintiff one would have expected the plaintiff to appear and depose. The power of attorney holder cannot depose on facts which are within the exclusive and special knowledge of the plaintiff.

The Companies Act 1956 and subsequently the Companies Act 2013 prescribes a procedure for transfer and transmission of shares. Transfer cannot be registered except on production of instrument of transfer.

Transfer of shares take place either by a fully executed document such as was contemplated by Regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as "blank transfers". In such blank transfers, the name of the transferor is entered, and the transfer deed signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of

the previous holder of the share. The company recognises no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to whom only the dividend declared by the company is legally payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of a blank transfer', and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee. These equities, however, do not touch the company, and no claim by the transferee whose name is not in the register of members can be made against the company, if the transferor retains the money in his own hands and fails to pay it to him. The company recognises, only a person who, as a shareholder, has his name entered on the register of members. A similar view of the Companies Clauses Consolidation Act, 1845, was taken in *Nanney v. Morgan*. The learned Lords Justices held that under section 15 of that Act, the transferee had not the benefits of a legal title till certain things were done, which were indicated by Lopes. L.J., in the following passage:

"Therefore the transferor, until the delivery of the deed of transfer to the secretary, is subject to all the liabilities and entitled to all rights which belong to a shareholder or stockholder, and, in my opinion, until the requisite formalities are complied with, he continues the legal proprietor of the stock or shares subject to that proprietorship being divested, which it may be at any moment, by a compliance with the requisite formalities."

The same position obtain in India, though the completion of the transaction by having the name entered in the register of members relates it back to the time when the transfer was first made. See *Nagabushanam v. Ramachandra Rao*, ILR 45 Mad 537: (AIR 1923 Mad 241). (See. ***M/s. Howrah Trading co. Ltd. v. Commissioner of Income Tax, Central, Calcutta: AIR 1959 SC 775***)

Transfer of shares is complete when duly executed and stamped transfer deed is delivered to the company irrespective of the fact whether the company registers it or not. [*K.N. Narayanan v ITO, (1984) 55 Comp. Cas.182 (Ker)*]

Before the instrument of transfer is signed by the transferor and before any entry is made therein it shall be presented to the prescribed authority appointed by the Government. Such officer shall put on the instrument the date of its presentation before him. This form will then be executed by the transferor and the transferee and completed in all other respects and delivered to the company for registration. Where shares are quoted on or dealt in a recognized stock exchange such form shall be delivered to the company within twelve months from the date put on the form by the prescribed authority or before the register of members of the company is closed, whichever is later.

As per Rule 5A* of the Companies (Central Government's) General Rules and Forms, 1956, for the purposes of clause (a) of sub-section (1A)

of section 108, the prescribed authority shall be the Registrar or such other authority as the Central Government may from time to time appoint in that behalf by Notification in the Official Gazette. Such was the requirement of law when the alleged transfer had taken place in favour of the plaintiff.

In **Mathrubhumi Printing and Publishing Co. Ltd. vs. Vardhaman Publishers Ltd. and Ors.** reported in **73 CC 80** the Division Bench of the Kerala High Court in discussing the legal effect of Transfer of shares and rights of shareholders' have stated thus:

“The question, therefore, is: when would the transfer become effectual as between the company and the transferees? The deed of transfer shall not have any effect so as to put the transferee into the position of the transferor until it has been lodged with the company, and it must be not only lodged, but accepted by the company as properly lodged, because if the company finds that it does not comply with the provisions of the Act it is its duty to refuse to receive it (see the decision of the Chancery Division in *Nanney v. Morgan* [1888] 37 Ch 346). Until the lodgment, the transfer may be effective between the transferor and the transferee. The transfer, however, becomes complete and the transferee becomes a shareholder in the true and full sense of the term with all the rights of a shareholder, only when the transfer is registered in the company's register. In the same strain is the statutory mandate to the company discernible from Section 108, not to register the transfer of shares unless a proper instrument of transfer duly stamped and executed is delivered to the company. Until such time as registration is granted, the person whose name is found in the register alone need be treated as the shareholder by the company. During the interregnum, that is, from the date of the transfer till the date

of lodgment the transferee no doubt, becomes the owner of the beneficial interest though the legal title continues with the transferor. This antecedent right in the transferee is enforceable, so long as no obstacle to it is shown to exist in any of the articles of association of a company or a person with a superior right or title, legal or equitable, does not appear to be there. This in brief is the law stated by the Supreme Court in the decision in *Pranlal's case* (1975)45 Comp Cas 43 (SC) and *Escort's case* (1986) 59 Comp Cas 548. The principles deducible from the above judicial pronouncements can be stated thus : Until the transfer of the shares is actually registered it should be held that the transferee's title to the share is inchoate, and that the legal title remains vested in the transferor (see *Colonial Bank v. Hepworth* [1887] 36 Ch 36 at pg.54). This line of reasoning is reinforced by Article 19 of Table A of Schedule I to the Act which provides that until the name of the transferee is entered in the register of members, the transferor shall be deemed to remain the holder of the shares transferred, thereby clearly stating that the legal title remains vested in the transferor. It is true that delay in the registration involves danger to the transferee if some already existing prior equity may come to light, as in the case in *Ireland v. Hart* [1902] 1 Ch 522, where a husband mortgaged shares of which he was trustee for his wife and, before the mortgagee had become the registered holder of the shares, the wife took proceedings claiming that her equitable title prevailed over that of the mortgagee, a claim which the court upheld ; or a second transfer may be passed and registered and thus the first transfer may be defeated (see para 39.07 of *Palmer*, 23rd edition). The position has been illustrated by *Palmer* thus :

"The rule on this point is that, 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 (i.e., equitable 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 shareholder ; or at any rate that all 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 Selborrie, 'a present, absolute, unconditional right to have the transfer registered, before the company was informed of the existence of a better title'."

It, therefore, follows that the equitable right of the transferee gets metamorphosed into the absolute right of a shareholder only when the names of the transferees after the recognition of the transfer, are entered on the register."

The provision contained in Section 108 of the Act states that "a company shall not register a transfer of shares...unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has been delivered to the company along with the certificate relating to the shares or debentures or if no such certificate is in existence along with the letter of allotment of the shares."

The said provision was held to be mandatory in **Mannalal Khetan and Ors. vs. Kedar Nath Khetan and Ors.** reported at **47 CC 185**. It was stated thus:

"The words shall not register" are mandatory in character. The mandatory character is strengthened by the negative form of the language. The prohibition against transfer without complying with the provisions of the Act is emphasised by the negative language. Negative language is worded to emphasise the insistence of compliance with the provisions of the Act.

Negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative.”

Admittedly the plaintiff did not file any application for transfer. The bald statement of the plaintiff that the original shares along with transfer form alleged to have been executed by Gouri was traceable only in the year 2014 is clearly unacceptable. Moreover, in the mean time third party interest has accrued. The defendant no.1 and 2 cannot be held responsible for not recording the name of the plaintiff in the share register. At this distant time it is not possible for Court to hold that there has been any connivance between the defendants due to lack of evidence. According to the plaintiff Gouri died in the year 1995. The amalgamation of TVS Suzuki took place on 10th December, 1999 and thereafter on 7th November, 2001 TVS Suzuki was renamed as TVS Motor Company Limited. It was during such time bonus shares were issued. Even the suit is barred by limitation as it was clear to the appellant by her own admission in paragraph 4 of the plaint that the plaintiff became aware of the shares being held in the name of Gouri in 2011 and no transfer had taken place in her name. By the said date, it was quite clear to the plaintiff that the name of the plaintiff was not reflected in the share register and the share register still records the name of Gouri. Three years have passed since then. The right to sue accrued in the year 2011 itself by reason of the letter dated 25th July, 2011, if we take a liberal view in this regard. The plaintiff made no attempt soon thereafter for

rectification of the share register. There is an unreasonable and unexplained delay of almost 21 years in first ascertaining the status of the shares alleged to have been purchased by the plaintiff on 2nd May, 1990 and thereafter more than three years had passed in not approaching the company for rectifying the register of members. It is thus ex facie barred by limitation. (See. ***Naveen Kumar v. Karnataka; AIR 1999 Kar 71***)

On such consideration we do not find any reason to interfere with the judgment and decree passed by the learned Judge 12th Bench, City Civil Court at Calcutta.

The suit stand dismissed along with CAN 9763 of 2017 and CAN 2 of 2022.

There shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)