IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No.296 of 2021
and
CMP.No.16790 of 2021

Vijay Nahar ..
Appellant

Versus

1. Mr. Anil Nahar,
2. M/s. Trans World Exports (P) Limited,
   represented by its Director,
   Mr.Anil Nahar, New No.21,
   Kannadasan Road, T.Nagar,
   Chennai - 600 017.
3. Mrs. Raj Kumari Nahar
4. Mr. Ashish Nahar
5. Mr. Sonali Baid

..
Respondents

This Original Side Appeal filed under Clause 15 of the Letters Patent read with Order 36 Rule 9 of the Original Side Rules to set aside the order dated 07.09.2021 passed by the learned Judge in A.No.3124 of 2021 in C.S.No.86 of 2004.

For Appellant : Mr.M.S.Krishnan, Senior Advocate
for Mr.V.G.Suresh Kumar

For Respondents : Mr.P.H.Aravind Pandian, Senior Advocate
for Mr.R.Vishnu

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Original Side Appeal has been filed against the order passed by the learned Judge in A.No. 3124 of 2021 in C.S.No.86 of 2004 on 07.09.2021.

2. The matter relates to impleadment of parties as defendants 3 to 5 in the suit in C.S.No.86 of 2004. The appellant / plaintiff had filed the said suit against the respondents 1 and 2 herein / defendants, praying for declaration of his half share in the suit schedule properties, for appointment of Commissioner for division of the properties and for allotment of his half share in the properties by metes and bounds, for injunction restraining the respondents from encumbering or alienating the suit schedule properties, for appointment of an Advocate Commissioner to ascertain the mesne profits in respect of the suit schedule properties and to direct the first respondent herein to render accounts and for other reliefs.

3. According to the appellant, he and the first respondent are brothers and are the sons of one D.C.Nahar, who founded the second respondent company and on the demise of the founder, the company is presently under the control of the first respondent. The suit schedule properties consist of two schedules 'A' and 'B'. There

are three items in Schedule 'A' and three items in Schedule 'B'. The respondents / defendants in the written statement filed by them, stated that except in respect of Item-3 in the Schedule 'A' property and Item-1 in the Schedule 'B' property, they have conceded for partition. On the basis of the same, a preliminary decree was passed for the agreed items. With regard to transfer of shares of the company, it was the specific case of the respondents that out of 22,500 shares held by the deceased D.C.Nahar, 50% shares were transferred to the wife and children of the first respondent in December 1999, about three weeks prior to the death of the deceased. Though the appellant had called upon the respondents to produce the documents in this regard, the originals of these documents have not been produced, but they have attempted to mark xerox copies of the documents during cross examination of DW1. Despite the objection made by the appellant, the copies of the documents were marked, against which, the appellant preferred O.S.A.No.168 of 2016, in which, this court has directed the defendants to mark the original documents and after marking, if necessary, substitute the same with authenticated xerox copies. Thereafter, evidence was closed and the matter was posted for arguments in December 2018. Only at the time of preparing for arguments, it was noticed by the appellant that the documents purported to have been executed by the deceased, based on which shares were transferred to the wife and children of the first respondent, were forged documents. The appellant had the documents examined by a retired handwriting expert and came to know that the signatures found therein, were forged.

4. In these circumstances, the appellant filed A.Nos.798, 799, 802, 803, 805 and 807 of 2019 for various reliefs, which included to re-open the evidence of the plaintiff, permit him to file additional documents, direct the defendants to produce the original documents pertaining to the second defendant company and the minutes of the meeting of the company for certain period, direct examination of papers by expert, and issue sub-poena to the Manager of Vijaya Bank, Triplicane Branch, Chennai to produce all records relating to the SB Account / Current Account of the defendant company, etc.

5. All these applications were dismissed by the learned Judge on 26.03.2021, against which the appellant preferred O.S.A.Nos.257 and 263 to 267 of 2021 and the same were also dismissed by a Division Bench of this Court, by judgment dated 18.08.2021.

6. Relying upon the observation made in the judgment dated 18.08.2021 that the documents marked on the side of the defendants have to be proved necessarily by them; and that, no view has been expressed with regard to the right of the appellant to file appropriate applications for impleadment of other persons, in whose name transfers have been made; and further observation that neither the order

passed by the learned Judge nor the judgment passed by the Division Bench will stand in way as such applications have to be decided on their own merits, the appellant filed an application in A.No.3124 of 2021 praying to implead the respondents 3 to 5 in whose names the shares stood in the name of D.C.Nahar were allegedly transferred. The said application was dismissed by the learned Judge by order dated 07.09.2021, which is impugned herein. While so, it was observed that the appellant had the best of particulars in the year 2004 itself; that, the time would start running on the appellant even going by his statement right from the time these documents were produced by D.W.1 in his evidence sometime in 2013; that, even if his date of knowledge attributed to October 2017 is reckoned, there is no explanation why he further delayed the process of impleading them till 03.09.2021; and that, even if the assets of the company are considered partitionable, the proposed defendants ought to have been added in the party array long back. Aggrieved by the same, the appellant / plaintiff is before this court with the present appeal.

7. The learned senior counsel appearing for the appellant submitted that fraud has been played in the matter of transfer of shares owned by the deceased in the second respondent company. Adding further, it is submitted that the learned Judge has failed to take note of the dictum laid down by the Hon'ble Supreme Court that fraud vitiates everything and there have been cases where when practice of fraud

by the litigant has been brought out, the same can be challenged at any stage of the proceedings. Having regard to the fact that the family of the first respondent was benefited by the transfer of shares coupled with report which *prima facie* establishes that the signatures of D.C.Nahar have been forged, the learned Judge ought to have ordered for appointment of an expert for comparison of signatures. The learned senior counsel further submitted that the details of the members of the company as found in the document issued by the Registrar of Companies on 11.03.2004 would no doubt show that the respondents 3 to 5 had become owners of certain shares, but however, the genuineness of the transfer in favour of the respondents 3 to 5 could be ascertained only when the actual documents are produced, which was done only in October 2017 during the cross examination of DW1 and immediately thereafter, the appellant has taken steps to implead those persons as parties to the suit. Finally stating that it is not correct on the part of the learned Judge to dismiss the application for impleadment at the threshold without going into the facts and without even ordering notice, the learned senior counsel prayed for setting aside the order impugned herein and to permit impleadment of those persons as parties to the suit. The learned senior counsel for the appellant also placed on the decisions of the Hon'ble Supreme Court in *Aliji Momonji & Co v. Lalji Mavji and others [(1996) 5 SCC 379], Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya (deceased) through LRs and others [(2017) 9 SCC 700], LIC of India v. Sanjeev*

Builders Private Limited and another [2022 SCC Online SC 1128] and Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (D) thr. LRs and others [2022 SCC Online SC 1307], in support of his contention that the presence of the proposed respondents is necessary for complete and effectual adjudication of the dispute.

8. On the other hand, the learned senior counsel for the respondents submitted that the case is proceeding in the right track and the learned Judge has considered all the facts and circumstances of the case and passed the impugned order, which does not require any interference in the hands of this Court. Referring to the decision of the Hon'ble Supreme Court in Shashi Prakash Khemka (Dead) through LRs and another v. NEPC Micon (Now NEPC India Limited) and others [(2019) 18 SCC 569], it is also submitted that the issue relating to transfer of shares, whether done rightly or wrongly, has to be adjudicated before the National Company Law Tribunal and the jurisdiction of the civil court is completely barred in this regard.

9. Heard both sides and perused the records carefully.

10. The challenge in this appeal is to the order of the learned Judge rejecting the request of the appellant for impleading some persons, in whose name

shares held by the deceased D.C.Nahar, have been transferred.

11. It is the specific stand of the appellant that the signatures of D.C.Nahar have been forged and that, the genuineness of the transfer of shares in favour of the respondents 3 to 5 herein, could be ascertained only when the actual documents are produced, which was done only in October 2017 during the cross examination of DW1. Immediately, the appellant took steps to implead those parties to the proceedings. However, the learned Judge erred in dismissing the said application. Thus, it is stated by the appellant that when fraud is found out, the same can be recitified at any stage of the proceedings and hence, the dismissal of the impleading application at the threshold, without delving deep into the issue, by the learned Judge, is incorrect.

12. The claim of the appellant has been opposed by the learned senior counsel for the respondents mainly on the ground that the application filed for impleading the respondents 3 to 5 as parties to the suit, at this length of time, is only to protract proceedings and hence, the same was rightly rejected by the learned Judge.

13. We have analysed the issue on hand, which rests only in respect of impleadment of parties. The established legal principles in this regard are that,

- Order 1 Rule 10 of the Code of Civil Procedure, enables the court to add any person as a party at any stage of the proceedings, if the person whose presence in court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit.
- Avoidance of multiplicity of proceedings is also one of the objects of the aforesaid provision.
- A person is not to be added as a defendant merely becuse he or she would be incidentally affected by the judgment.
- If the question at issue can be worked out without any one being brought in, a stranger should not be added as a party.
- The eventual interest of the party in the fruits of the litigation cannot be held to be a true test of impleading the parties, according to the Code of Civil Procedure.
- If the persons, who are sought to be impleaded have no subsisting rights over the properties and they are sought to be impleaded only for the purpose of getting their evidence, it would not be proper to make them parties to the suit and the apprehension raised by the plaintiff that he would be driven to the necessity of filing a separate suit against these persons, is not a sufficient justification to compel the plaintiff to implead them as parties to the suit.

- A purchaser of the property in auction during the pendency of the suit, can be impleaded as a party to the suit. However, the alienees are neither necessary nor proper parties, since the alienation made during the pendency of the suit, is hit by the doctrine of lis pendens under section 52 of the Transfer of Property Act.

14. It is an admitted fact that the appellant and the first respondent are brothers and are the sons of deceased D.C.Nahar, who is the founder of the second respondent company; and that, the proposed defendants / respondents 3 to 5 are none other than the wife and children of the first respondent. The appellant sought impleadment of those persons to the suit proceedings, on the ground that 50% of the shares of the second respondent company have been transferred to them by forging the signatures of the deceased D.C.Nahar.

15. It is important to mention at this juncture that the evidence was closed and the case was posted for arguments and only at this stage, the appellant has taken steps to implead the respondents 3 to 5 herein as parties to the suit. Upon examining the factual matrix, the learned Judge has correctly observed in the impugned order that the appellant had the best of particulars in the year 2004 itself, and hence, the

claim of impleadment is barred by limitation. It was further observed by the learned Judge that there is no explanation given by the appellant as to why he delayed the process of impleading the parties till 03.09.2021. The documents said to have been introduced in evidence by DW1, were not in the year 2017, but on 18.12.2014, when DW1 was examined in chief. Therefore, in the absence of any plausible explanation for the delay, the claim against the proposed parties is apparently, barred by limitation. The decisions relied on by the learned senior counsel for the appellant are not applicable to the facts of the present case, as the same are factually distinguishable.

16. Though the learned senior counsel for the appellant contended that time have to be reckoned not from the date of production of the documents, but only from the date on which the appellant came to know about the forgery; and at the earlier point of time, there was no suspicion on his part as to the genuineness of the documents, this court is not inclined to accept the same, in view of the fact that the appellant vide Ex.P3 came to know, who are all the shareholders of the company, in 2004 itself. Further more, the attempt made by the appellant / plaintiff to prove that the signatures found in the share certificates were forged, has already been negatived by the Division Bench of this Court in O.S.A.Nos.257, 263 to 267 of 2021 by judgment dated 18.08.2021 and hence, the issue as to whether the share transferred

to the proposed defendants is genuine or not, at this length of time, cannot be entertained, as the same can be treated as one having secondary importance, as rightly pointed out by the learned Judge. In view of the same, the decision referred to on the side of the respondent is of no relevant to the present case.

17. Thus, in the light of the established legal principles as stated above, having observed that the option of passing an order of impleadment is purely discretionary, based on the facts and circumstances of the case, this court finds no illegality or infirmity in the order passed by the learned Judge, dismissing the impleadment application.

18. In such view of the matter, the Original Side Appeal deserves to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
03.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation : Yes / No

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