IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.08.2024	Pronounced on: 08.11.2024

CORAM:

THE HON`BLE MR.JUSTICE P.B.BALAJI

C.S.No.86 of 2004

Mr.Vijay Nahar ..Plaintiff

Vs.

1.Mr.Anil Nahar

2.M/s.Transworld Exports (P) Ltd,
Rep. by its Director,
Mr.Anil Nahar

...Defendants

PRAYER: Plaint filed under Order VII Rule 1 of CPC r/w Order IV Rule 1 of the O.S. Rules, praying to pass judgment in favour of the plaintiff against the defendants,

(a) To declare the plaintiff's half share in the suit schedule properties;

(b) To appoint a Commissioner for division of the properties and allot half share in the suit schedule properties by metes and bounds;

(c) To grant an injunction restraining the defendant, their men, agents, assignees from encumbering or alienating the suit schedule properties; and

(d) To appoint an Advocate Commissioner to ascertain the mean profits in respect of the suit schedule properties and direct the 1st respondent to render profits to the plaintiff for 3 years from the date of filing of the suit;

(e) Directing the defendant to pay cost of the suit.

For Plaintiff		: Mr.AR.L.Sundaresan, Senior Counsel for Mr.V.G.Sureshkumar
For Defendants		
	For D1	: Mr.P.H.Aravind Pandiyan, Senior Counsel for Mr.R.Vishnu
	For D2	: Mr.RSankaranarayanan, Senior Counsel for Mr.R.Vishnu.

JUDGMENT

This is a suit for partition by way of declaring the plaintiff's one half share in the suit properties which are listed out as Schedule A, being consisting of three items of immovable properties and Schedule B consisting of 1 item of immovable property at Jodhpur, Rajasthan and shares in the name of Late D.C.Nahar in M/s.Transworld Export Private Limited as on 11.01.2000 and Death Insurance claim with LIC.

2. The plaint in a nutshell:-

The plaintiff and the 1st defendant are sons of late, D.C.Nahar, the 2nd defendant is a Company incorporated under the Companies Act, 1956, and is represented by the 1st defendant being its Directors, the 2nd second defendant Company was incorporated in 1973, with the object of carrying on business in ready made garments and also with a choice of expansion in subsidiary businesses. The father of the plaintiff and the 1st defendant entered into an agreement to purchase an immovable property at Venkata Narayana Road, T.Nahar, Chennai 17, which is listed as Item No.1 to Schedule A of the suit property.

3.According to the plaintiffs, the property was purchased substantially under sale deed dated 12.09.1973 comprising an extent of 10 grounds in 2320 sq.fts of land with built up area of 7000 sq.ft and subsequently in 1976, when 3 grounds and 1760 sq.ft of adjoining the property also purchased. According to the plaintiff, though the property was purchased in the name of the 2nd defendant, the 2nd defendant is only a business of the family, consisting of the plaintiff, the 1st defendant and his father late D.C.Nahar. The plaintiff further states that his father late D.C.Nahar retired from Directorship of the 2nd defendant Company on 04.12.1977 and prior to the same, the 1st defendant was appointed as

Director on 12.10.1977. The property which was purchased in the name of the Company was dealt with only by late D.C.Nahar as Karta of a joint family consisting of himself, the Plaintiff and the 1st defendant and there was no occasion for the plaintiff to seek partition since his father was alive and relationship was cordial. In fact, the first item of Schedule A was let out on a very low rent to subsidiary Companies, wherein family members had interest, because the 2nd defendant Company was only a family concern.

4. While things being so, the father D.C.Nahar died on 11.01.2000 and subsequent to his demise, the 1st defendant started asserting control over the other family members which led to the second wife of the plaintiff's father, Sreelatha Nahar instituting proceedings before Company Law Board against the 1st defendant and the Company, including the relief of appointment of receiver to administrate the property viz., Item 1 of Schedule-A. A Civil Suit in O.S. No.7760 of 2000 seeking an injunction, was also filed by the 1st defendant against Sreelatha Nahar, the second wife of late D.C.Nahar.

5. The proceedings initiated by the 1st defendant clearly exposed the

evil intention of the 1st defendant to appropriate the property and the entire profits of the business. The plaintiff never suspected the bonafides of the 1st defendant and even when the plaintiff approached the 1st defendant seeking partition of the family properties, the 1st defendant never denied the rights of the family property including the property which stood in the name of the 2nd defendant Company.

6. According to the plaintiff, he holds independent shares in the Company in his name, apart from his entitlement as the legal heir of his father who held shares in the second defendant Company. The plaintiff's mother also held shares and after her demise in 1988, her shares were also put into the common hotchpotch of the family business. The plaintiff, on realizing that the first defendant was evading in settling the plaintiff's claim, issued a lawyer's notice on 25.02.2003, calling upon the 1st defendant to divide half share in the estate of her parents. On receipt of the said notice, the 1st defendant sent a reply on 22.03.2003 admitting the relationship between the parties and also claiming that her father had an illicit relationship with one Sreelatha and in the said reply notice, the 1st defendant admitted that he was willing to amicably divide the properties at East Coast

Road and also at Jodhpur, Rajasthan. According to the plaintiff, the first the defendant is in possession of the entire share of the father, late D.C.Nahar and therefore bound to account for the same. The 2nd defendant Company owns the property in Kannadasan Road, Chennai, however the said property was also belonging to the family and the plaintiff is entitled to half share in the same. The 1st defendant is encumbering the assets of the Company and creating third party interests, to the detriment of the plaintiff, taking advantage of being in control of the affairs of the 2nd defendant Company. Hence, the plaintiff also sought for the relief of permanent injunction along with a prayer for declaration of his half share in the suit schedule properties.

7.The 1st defendant filed a written statement, the said written statement in a nutshell:-

The defendant admits the relationship between the parties. However, insofar as the 2nd defendant Company, the 1st defendant states that it is a Company incorporated under the Companies Act and both items 1 and 2 of Schedule A have been purchased in the name of the Company and the Company is the owner of the said properties. The allegation that the Company is only a family business is denied. According to the 1st defendant, the plaintiff was a shareholder and the Director of the 2nd defendant Company and therefore, his rights are set out by the Memorandum and Articles of Association of the Company read with provisions of the Companies Act, 2013. According to the 1st defendant, the plaintiff is neither a shareholder presently nor a Director of the 2nd defendant Company. Further the allegations that the subsidiary businesses were carried on by the plaintiff's father is also denied. The plaintiff has no share, right or interest in the properties admittedly purchased in the name of the Company, viz., the 2nd defendant and therefore, the plaintiff cannot seek for partition of the said immovable properties of the Company which is a separate legal entity.

8. The 1st defendant has further stated that the plaintiff has sent a letter dated 01.12.1977 to the 2nd defendant Company expressing his unwillingness to continue as Director and requesting to accept his resignation in Directorship and relieve him at the earliest. The said request was placed before the Board and the same was accepted by the 2nd defendant Company, which was also accepted by the plaintiff in his communication dated 05.12.1977. The allegation that the relationship was cordial between the father and the son, viz., the plaintiff and his father is also stoutly denied.

The plaintiff being neither a Director nor a shareholder cannot seek for accounts of profit in the Company and the Karta is fictitiously used only to self serve the plaintiff's cause.

9. With regard to letting out the property owned by Company to the subsidiary Companies on low rent, the same is also denied, since according to the 1st defendant, the property of the Company was never leased to so called subsidiary Companies of any of the family members. The defendant denies the claim of the plaintiff that late D.C.Nahar was running a family business under the style of M/s.Venkateshwara Traders. However the 1st defendant submits that M/s.Venkateshwara Industries was a separate business of late D.C.Nahar and the 1st defendant had nothing to do with the same. In fact, the Company had a huge tax liability of Rs.159.42 lakhs payable to the Commercial Tax Department and as the Legal Heir notice was also served by the Department of Commercial Tax Officer on the 1st defendant.

10. Insofar as 11250 shares described in Item 2 of the Schedule B of the plaint, the 1st defendant states that on the date of his death, late

D.C.Nahar did not own any shares in the 2nd defendant Company. The claim of the plaintiff that Sreelatha is the second wife of D.C.Nahar is also stoutly denied. There is no legal or valid marriage between late D.C.Nahar and Sreelatha. In fact only because the said Sreelatha was claiming to be the second wife and committed nuisance by acts of waste in Item 1 and 2 of A Schedule property, the 1st defendant was constrained to file the suit along with the 2nd defendant, to restrain her from causing any nuisance. However, in the meantime, the said Sreelatha initiated proceedings before the Company Law Board claiming that certain shares were transferred in her favour by late D.C.Nahar even during his lifetime. The 1st defendant disputed the same. However, when the said Sreelatha produced appropriate transfer deeds executed by late D.C.Nahar, the 1st defendant agreed to amicably settle the matter and also purchase the said shares which were transferred in the name of Sreelatha. Sreelatha also vacated and handed over vacant possession of the property under her occupation and the connected proceedings were withdrawn as settled.

11. The 1st defendant submits that the property at East Coast Road, Uthandi is a separate property of the father, D.C.Nahar and similarly the

property at Jodhpur, Rajasthan is a separate property of the father, late D.C.Nahar. However, the claim of joint possession in respect of these two properties is denied since according to the 1st defendant he is in absolute possession of East Coast Road property and his cousin is in possession of the Jodhpur property.

12. The 1st defendant admits that the plaintiff is entitled to half share in the separate properties left behind by the father. Insofar as the shares, the 1st defendant stated that the shares of late D.C.Nahar with the 2nd defendant Company were available to be shared between his legal heirs namely the plaintiff and the 1st defendant. However, Sreelatha claimed the said shares based on a transfer affected by late D.C.Nahar during her lifetime. Once the 1st defendant found that the shares were duly transferred in favour of Sreelatha even during the lifetime of late D.C.Nahar the father, the 1st defendant and his wife purchased those shares from Sreelatha. Therefore, the father late D.C.Nahar did not hold any shares on the date of his demise and consequently, the plaintiff cannot claim any share or right over non existing shares. The exchange of notices is admitted and the 1st defendant has stated that even in the said reply notice he has stated that insofar as the separate properties of the father, the plaintiff was entitled to a share, but not

in respect of the properties belonging to the Company.

13. According to the 1st defendant there is no family business and no family assets and the family owned only immovable properties in the form of cash and jewelry and the same was partitioned even in the year 1977 which is confirmed even by the plaintiff, vide his affidavit dated 02.12.1977. Further the plaintiff also released and relinquished his interest in the business, Novelty Exports under a release deed dated 29.11.1977. Even in the registered will executed by father, late D.C.Nahar on 27.04,1983, he has recorded the fact that the plaintiff has already severed his connections with the family. Even in his subsequent Will dated 26.12.1990 as well, the strained relationship between the plaintiff and father had been clearly spelt out and the father was even constrained to lodge a police complaint against the plaintiff on 27.02.1982 that the plaintiff attempted to physically attack and cause injury on the father. The 1st defendant also states that the plaintiff has not paid proper Court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, and even on this ground the suit is liable to be dismissed. Insofar as the relief of injunction and mense profits also, the 1st defendant denies the entitlement to any of these reliefs. On these grounds, the 1st defendant sought for dismissal

of the suit.

14. On 23.11.2009, this Court framed the following six issues:-

"*1. Whether the suit for partition is maintainable in respect of Items 1 and 2 of plaint "A" schedule property, since admittedly, the same belong to the 2nd defendant Company?*

2. Whether the plaintiff is entitled to a decree directing partition of items 1 and 2 of plaint 'A' schedule property as prayed for in the plaint?

3. Whether the deceased D.C.Nahar did have any share in M/s.Transworld Exports Private Limited so as to enable the plaintiff to claim partition of the said shares?

4. Whether the plaintiff is entitled to an injunction against the defendants from encumbering or alienating the suit properties?

5. Whether the plaintiff is entitled to mesne profits?

6. To what relief the plaintiff is entitled?"

15. On the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.P1 to P9 were marked. On the side of the defendants, the 1st defendant examined himself as D.W.1 and Exs.D1 to D58 were marked. However in view of certain orders that came to be passed pending the suit, the scope of dispute has narrowed down. In and by an order dated

07.09.2021, this Court, considering that there is no dispute over Item 3 in Schedule A and items 1 & 3 in Schedule B, proceeded to pass a preliminary decree. In view of the same, the disputes which are now required to be decided by this Court are two fold namely,

> (i) Whether the plaintiff is entitled to seek partition of Items 1 & 2 of schedule A property, which items are admittedly standing in the name of the second defendant Company.
>
> (ii) Whether the plaintiff is entitled to a share in the estate of his father late, D.C.Nahar, if available, on the date of his demise.

16. I have heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.V.G.Suresh Kumar, learned counsel for the plaintiff and Mr.P.H.Arvind Pandian, learned Senior Counsel for Mr.R.Vishnu appearing for the 1st defendant and Mr.R.Sankaranarayanan, learned Senior Counsel for Mr.R.Vishnu, learned counsel for the 2nd defendant,

17. <u>Issues 1 to 3:</u>

Mr.AR.L.Sundaresan, learned Senior Counsel for

Mr.V.G.Sureshkumar, learned counsel for the plaintiff would submit that admittedly, the plaintiff was one of the sons of late D.C.Nahar, who died intestate and therefore, as a Class-I legal heir, the plaintiff was entitled to an equal share in the estate left behind by the D.C.Nahar along with the 1st defendant, who is the other son. The learned Senior Counsel would further submit that when admittedly it has been established that late D.C.Nahar held 22500 shares in the 2nd defendant Company and the transfer in favour of Sreelatha was established to be fraudulent, the plaintiff was entitled to one half of the said 22500 shares, namely 11250 shares.

18.The learned Senior Counsel would take me through the alleged share transfer deeds in Ex.D48 and the share certificates in Exs.D55 to D58 and point out various anomalies in the said documents, thereby indicating that all was not well with the alleged transfers effected. The learned Senior Counsel would also submit that even before the Company Law Board, the 1st defendant initially took a stand that his father had not transferred any shares in favour of Sreelatha and therefore, according to the learned Senior Counsel, it was not open to the 1st defendant to turn around and take a diametrically opposite stand and later contend that he accepted the transfer of shares effected by his father.

19.The learned Senior Counsel would also submit that even the transfer in favour of children of the 1st defendant was not property established and on the contrary, the plaintiff had established that the signatures exhibited in blank forms were misused to bring about the alleged transfers.

20.With regard to the immovable property, the learned Senior Counsel would submit that though the property has been purchased in the name of the Company, the Directors of the 2nd defendant Company and the shareholders were all family members and it is a closely knit family Company and there were no outsiders or shareholders or Directors. He would further submit that the immovable property, though purchased in the 2nd defendant's name, it was in fact the property of the family and consequently, the plaintiff was entitled to seek partition.

21.The learned Senior Counsel would also submit that the plaintiff had specifically challenged the veracity of the transfers and genuineness of signatures of late D.C.Nahar in the transfer documents. He would also refer to the order passed by the learned Single Judge of this Court in A.Nos.798, 799, 802, 803, 805 and 807 of 2019 dated 26.03.2024 and the common judgment of the Hon'ble Division Bench of this Court in O.S.A.Nos.257, 263 to 267 of 2021 dated 18.08.2021, where it has been observed that the documents marked on behalf of the defendants have to be proved only by them. He would therefore submit that the burden was therefore only on the defendant to establish the genuineness of the share transactions and not on the plaintiff. The plaintiff also took bonafide steps to have the signatures compared by a forensic expert and unfortunately, the said applications were rejected.

22.The learned Senior Counsel would also take me through the various documents exhibited during trial, especially the annual returns, folio numbers and also Rules regarding issuance of share certificates as available under Rule 4 of the Companies (Issue of Share Certificate) Rules, 1960, and challenged the transactions under which the shares of late D.C.Nahar were transferred, thereby depriving the plaintiff of his lawful entitlement of 11250 shares. The learned Senior Counsel would also state that the share transfer deeds and duplicate share certificates certificate issued were all in contravention of the relevant Rules of Companies (Issue of Share Certificates) Rules, 1960, and he would point out several instances where the consideration was left blank, witnesses signatures were not available, folio numbers being incorrect and signatures also missing in some relevant places. In short, according to the plaintiff, the the signatures of late D.C.Nahar were forged and the share certificates issued in favour of the Sreelatha and grandchildren were all invalid and consequently, the original allotment made in favour of D.C.Nahar alone stood valid, thereby entitling the plaintiff to a 50% share in the same.

23.Per contra, Mr.P.H.Aravind Pandian, learned Senior Counsel and Mr.R.Sankaranarayanan, learned Senior Counsel appearing for the defendants would submit that even according to the plaintiff, the 2nd defendant being a Private Limited Company, incorporated under the Companies Act and there being a specific pleading in that regard besides admissions of the plaintiff during evidence, the plaintiff was not entitled to seek partition of the property belonging to the Company, as if it was the property of his father, D.C.Nahar.

24.The learned Senior Counsel would further submit that the claims made by the plaintiffs were vague and the transfer of shares has not been challenged in the suit and therefore, no relief can be granted. The learned Senior Counsel would further contend that without any pleading the plaintiff has ventured to lead evidence regarding various share transfers effected by late D.C.Nahar and the plaintiff, is consequently disentitled to lead evidence in the absence of pleadings and is not entitled to any relief in the suit.

25.The learned Senior Counsel would further submit that when the plaintiff pleads knowledge of the proceedings before the Company Law Board, where according to the plaintiff, the 1st defendant had given up the right of the plaintiff, the plaintiff ought to have taken steps to challenge the said proceedings or at least get himself to impleaded in the Company Law Board proceedings and ought to have independently canvassed his rights and without doing so, the plaintiff was disentitled to seek for partition assuming that shares of late, D.C.Nahar were available for partition.

26.In fact, the learned Senior Counsel would also submit that the order passed by the Company Law Board being a decree is appealable and without preferring an appeal, the plaintiff cannot file the present suit and circumvent the procedures available under law. Reliance is also placed on Order II Rule 2 of CPC and it is contended that when the plaintiff has not challenged the transfer of shares by late D.C.Nahar to Sreelatha and in turn, Sreelatha to the 1st defendant, no relief can be granted by way of partition in favour of the plaintiff and the bar under Order II Rule 2 of CPC would squarely apply.

27.The learned Senior Counsel would also draw my attention to Section 430 of the Companies Act, 2013 and he would contend that this Court does not have jurisdiction to desire the matter as it is not a case involving simple devolution of interest, but a case where the original shareholder had transfered shares to another person.

28.Yet another argument placed by the learned Senior Counsel is regarding non-joinder of Sreelatha as a party defendant to the suit and also the children of the 1st defendant, who are the present beneficiaries and shareholders. The learned Senior Counsel would also submit that any adverse decree passed in the present suit would only affect the rights of Sreelatha and the grandchildren of D.C.Nahar and in their absence, no relief can be granted. The next contention raised by the learned Senior Counsel is regarding Order XXIII Rule 3A of CPC. According to the learned Senior Counsel, the plaintiff having failed to challenge the consent order passed by the Company Law Board, within three years, was estopped by the provisions of Order XXIII Rule 3A of CPC to seek any right over the shares transferred by Sreelatha in favour of the 1st defendant.

29.I have carefully considered the arguments of the learned Senior Counsel appearing for the parties.

30.During the course of arguments, the learned Senior Counsel drew my attention to certain orders passed *inter se* the plaintiff and the defendants in the present proceedings and more particularly, the order of the Hon'ble Supreme Court in SLP(C).No.830 of 2024 where the Hon'ble Supreme

Court dismissed the SLP preferred by the plaintiff as against an application seeking impleadment of the wife and children of the 1st defendant, the beneficiaries under various share transaction agreements. The relevant portion of the said order is extracted hereunder for easy reference:

> *"3.In view of the nature of the lis involved, we are of the vin that any observation by this Court would prejudice either of the parties in the pending proceeding, which is already at fag end. In troth, the final arguments are going on in the said proceeding. Whatever be the outcome of the pending proceedings before the trial Court, if the petitioner has any right to pursue against the proposed defendant Nos.3-5, he has to workout his remedies appropriately and in accordance with law."*

Thus, it is clear that the attempts of the plaintiff to even implead the beneficiaries of the share transactions as parties to the suit was unsuccessful and rejected as time barred. The Hon'ble Supreme Court confirmed the orders passed by the learned Single Judge and the Hon'ble Division Bench in O.S Appeal proceedings, giving liberty to the plaintiff to workout his remedies in accordance with law, independently.

31.Thus, from the above, it is clear that in the light of the reliefs sought for and the admitted fact that the 1st defendant is no longer holding the shares of D.C.Nahar and admittedly shares of D.C.Nahar have been dealt with and stand in the names of the wife and children of the 1st defendant, they being not party defendants to the suit and there being no challenge by way of a specific relief in the suit to such share transactions, the suit is certainly bad for non-joinder of proper and necessary parties. Any relief granted in favour of the plaintiff would directly and substantially affect the rights of third parties who are not arrayed as defendants in the present suit. Therefore, the defendants are entitled to succeed on the ground of non-joinder of proper and necessary party, namely not only Sreelatha but also the grandchildren of D.C.Nahar.

32.Though the learned Senior Counsel for the plaintiff would submit that as the plaintiff has been able to successfully establish that the share transactions were all fabricated and forged, there will be no necessity for impleading Sreelatha and grandchildren of the 1st defendant since even according to the 1st defendant, he had acquired the entire shares from Sreelatha and therefore, Sreelatha would not be adversely affected by a decree is granted in favour of the plaintiff in the above suit. Insofar as the share transfer made in favour of the grandchildren of D.C.Nahar, he would submit that the Hon'ble Supreme Court has granted liberty to workout the rights of the plaintiff in a manner known to law and therefore, at least in respect of the remaining 11250 shares, the plaintiff having established that the share transactions were all stage managed and brought about, the plaintiff should be entitled to his 50% share in at least, the said 11250 shares which was not concerning the grandchildren of late, D.C.Nahar but only Sreelatha and the 1st defendant.

33.I am unable to countenance the said argument advanced by the learned Senior Counsel appearing for the plaintiff.

34.Admittedly, as seen from the plaint, there is not a single allegation that the share transactions have been fraudulently brought about and no relief in that regard is also sought for in the plaint. The only allegation found in the plaint are that *"a bare perusal of the pleadings in the said proceedings in the Company Law Board and City Civil Court, it clearly show that the 1st defendant after the death of the father, with an evil intention to appropriate the said property and profits of the business and manipulated the accounts and records of the Company and hypotheticating the assets of the Company including the immovable properties to meet requirement of his personal business concerns".*

I reminded of Order VI Rule 4 of CPC, which is extracted hereunder for easy reference:

> *"**4.Particulars to be given where necessary.-***
>
> *In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified on the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."*

Thus, it was necessary for the plaintiff to plead all relevant facts and materials to substantiate the claim made in the plaint as extracted herein above.

35.Unfortunately, no specific details have been provided in the plaint, excepting for the vague allegations which have been extracted herein above. Therefore, in the absence of pleadings, more specifically, attacking the share transfer forms on the grounds of fabrication and forgery, it is not open to the plaintiff to lead any evidence and all evidence on which heavy reliance is placed on by the learned Senior Counsel for the plaintiff would be of no evidentiary value in the absence of pleadings supporting the said evidence adduced during trial. Therefore, even though the Division Bench had observed that the burden would be on the defendants to establish the genuineness of the share transactions, I do not see this coming into play in the light of the above observations.

36.Even at least if there had been a relief by way of a prayer challenging the share transactions, it could have given a ray of hope to the plaintiff to lead evidence in support of the relief sought for in the plaint. Unfortunately, there is no relief also claimed in the suit, excepting for partition and separate possession. Admittedly, when the share transactions have not been challenged and even when the plaintiff had knowledge of the Company Law Board proceedings which are also set out in the plaint, it is not open to the plaintiff to simpliciter pray for a relief of declaration of his alleged half share in the suit properties.

37.As rightly contended by the learned Senior Counsel appearing for the defendants, when the plaintiff has clearly knowledge about the proceedings of the Company Law Board, he ought to have taken immediate steps to challenge those proceedings and having allowed the compromise order to stand, despite knowing that the plaintiff's right had been divested under the said compromise before the Company Law Board, the plaintiff has only acquiesced himself and merely seeking for a decree for partition would not take the plaintiff anywhere. The plaintiff is clearly estopped and barred by Order II Rule 2 of CPC for having consciously given up his challenge to the Company Law Board proceedings. Without challenging the transfers made in favour of Sreelatha and consequently, from Sreelatha to the 1st defendant, the plaintiff cannot be entitled to any decree for partition and as rightly contended by the defendants, that the bar under Order II Rule 2 of CPC would apply even for not having challenged the consent decree of the Company Law Board, within a period of three years from the date of knowledge of the same.

38.The present suit which indirectly and in disguise challenges the Company Law Board consent order is not permissible and as contended by the learned Senior Counsel for the defendants, the bar under Order XXIII Rule 3A of CPC would also stand attracted to the facts of the present case.

39.Though elaborate argument has been advanced by the learned Senior Counsel for the plaintiff with regard to various acts of forgery and fabrication in brining about the share transactions, in view of the settled position of law, as already discussed herein above, no amount of evidence without pleadings is permissible in a civil suit, I do not deem it necessary to discuss the portions of evidence which has been relied on by the learned Senior Counsel during the course of arguments.

40.With regard to the immovable property, admittedly the plaintiff himself has in no uncertain terms stated that the property stands in the name of the 2nd defendant Company. Therefore, the plaintiff has no legs to stand in sofaras the right to claim partition in respect of the property belonging to the Private Limited Company. Unfortunately, the arguments advanced that it is a close knit Company and no outsiders or shareholders or Directors does not advance the case of the plaintiff, in law.

41.In *Bacha F.Guzdar Vs. Commissioner of Income Tax, Bombay* reported in *(1954) 2 SCC 563*, the Hon'ble Supreme Court held that the Company is a juristic person and distinct from shareholders and the property owned by the Company is the property of the Company and not that of the shareholders.

42.In *K.S.Mothilal Vs. K.S.Kasimaris Ceramique (P.) Ltd* reported in *Manu/TN/0963/2001*, this Court held that Company's assets are distinct and shareholders cannot claim to be owners of the property owned by the Company.

43.In *Ramesh Kumar Bhagchandka Vs. Mahesh Kumar Bhagchandka and others* reported in *2014 SCC Del 1324*, the Delhi High Court, following the ratio laid down by the Hon'ble Supreme Court in Bacha *F.Guzdar's case*, discussed herein above, held that a shareholder has no right over the assets of the Company and he is at best entitled to the dividends when declared by the Company from time to time and a shareholder is not entitled to seek for partition on the basis of his shareholding.

44.Reliance was also placed by the learned Senior Counsel on the decision of the Hon'ble Supreme Court in *Howrah Trading Co. Ltd., Vs. Commissioner of Income Tax, Central, Calcutta,* reported in *Manu/SC/0063/1959*, where the Hon'ble Supreme Court held that the word “shareholder” would denote a person whose name and address are entered in the register of shareholders maintained by the Company and benefit can only go to the person who, both in law and in equity, is to be regarded as the owner of the shares and between whom and the Company exists the bond of membership and ownership of a share in the share capital of the Company. This decision is relied on by the learned Senior Counsel for the defendants to fortify his submissions that the plaintiff has not let in any evidence whatsoever to even *prima facie* established that he remains a shareholder of the 2nd defendant Company and thereby he was entitled to dividends or to challenge the various transactions.

45.The learned Senior Counsel for the defendants also placed reliance on the decision of the Hon'ble Supreme Court in *Suhrid Singh @ Sardool*

Singh Vs. Randhir Singh & Others, reported in *2010 3 LW 599*, where the Hon'ble Supreme Court held that where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed, but if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid or non-est or illegal, or that it is not binding on him and that in essence, in both cases, it was suing to have the deed set aside or declared as non-binding and it is only the form that is different and Court fee that is payable is different.

46.On the side of the plaintiff, the learned Senior Counsel placed reliance on the decision of this Court in *Alamelu alias Chinnakannammal and Others Vs. Manickammal* reported in *Vol 92 LW 306*, where this Court held that since forged documents do not convey any title, it is not necessary for seeking a relief to set aside the document. However, from the facts of the said case, it is seen that the plaintiff therein had pleaded forgery of the documents and a contention was raised that since he was a party to the document, separate relief had to be prayed challenging the same which was consequently paid under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. Therefore, the facts of the said case cannot be made applicable to the facts of the present case where except for a vague statement in the plaint, there are no specific details regarding the alleged forgery committed by the defendants, in divesting the plaintiff of his rights in the estate of his father late D.C.Nahar.

47.The learned Senior Counsel next placed reliance on the decision of the Hon'ble Supreme Court in *Mannanlal Khetan and Others Vs. Kedar Nath Khetan and Others* reported in *(1977) 2 SCC 424*, where the Hon'ble Supreme Court was dealing with a case regarding non compliance of Section 108 of the then Companies Act, 1956 and as to whether the words 'shall not register' made the provision mandatory or not and in that context held that the prohibition against transfer without complying with the provisions of the Act was emphasised by the negative language used in the prevision itself. Unfortunately, in the present case, the plaintiff has not even challenged the share transfers and there is absolutely no pleading even with regard to the manner in which the transfer of shares was effected and therefore, the ratio laid down by the Hon'ble Supreme Court does not lend any support or strength to the plaintiff's case on hand.

48.The oft-quoted judgment in *S.P.Chengalvaraya Naidu (Dead) by LR's Vs. Jagannath (Dead) by LR's and Others* reported in (*1994) 1 SCC 1* was also relied on by the learned Senior Counsel for the plaintiff, where the Hon'ble Supreme Court held that a judgment and decree obtained by fraud was a nullity and could be questioned even in collateral proceedings and on the facts of the said case held that there was fraud apparently committed by suppression and non disclosure of the release deed and consequently claiming right by way of partition. Therefore, the facts under which the Hon'ble Supreme Court held that the judgment or decree obtained could be challenged even in collateral proceedings cannot apply to the facts of the present case. Here, the challenge is not to any judgment or decree obtained by playing fraud and the plaintiff only alleges that particular share transactions were actually forged and fabricated. In such case, the burden was only on the plaintiff to plead and prove such allegations. Therefore, the ratio laid down in the said case will not apply to the facts of the present case.

49.In *Indian Bank Vs. Satyam Fibres (India) Pvt., Ltd.,* reported in *(1996) 5 SCC 550*, the Hon'ble Supreme Court held that the National

Commission had a power to review its own judgment which was obtained on a ground of fraud and forgery. The Hon'ble Supreme Court discussed the facts and circumstances which pertained to fraud committed before the Court and held that it amounts to abuse of process of the Court. However, in the present case, the facts are entirely different and therefore, the ratio laid down in the said case also is of no avail to the plaintiff.

50.Similarly, in *United India Insurance Co.Ltd., Vs. Rajendra Singh and Others* reported in *(2000) 3 SCC 581* also there was a fraud played on the Court/Motor Accident Claims Tribunal in obtaining an award of compensation, and in such circumstances, the Hon'ble Supreme Court held that power to correct an error or by fraud was available inherently.

51.Even in *Ram Preeti Yadav Vs. U.P.Board of High School and Intermediate Education and Others* reported in *(2003) 8 SCC 311*, the Hon'ble Supreme Court held that once fraud is proved, it will deprive the person of all advantages or benefits obtained thereby. The said case was pertaining to fraud in issuance of mark sheet to a student in a written examination. Unfortunately, when the plaintiff alleges fraud and forgery and also leads evidence without any pleadings as contemplated under Order VI

Rule 4 of CPC, I am unable to see how all these decisions of the Hon'ble Supreme Court would even apply in favour of the plaintiff.

52.All these decisions would have become available for the plaintiff to rely upon only if the plaintiff had in the first instance pleaded particular instances of fraud and given full and best description of the manner in which fraud has been committed, before leading evidence on such pleadings and then contending that the plaintiff has established fraud. Without doing so and also without seeking appropriate reliefs in the plaint and by merely seeking the relief of partition, the plaintiff unfortunately can only be non suited.

53.With regard to the argument of the learned Senior Counsel for the defendants that the suit itself was not maintainable before this Court as it would have to be made before the Company Law Board, citing Section 430 of the Companies Act, from a reading of the plaint, especially the allegations extracted hereunder:

> *"5............ A bare perusal of the pleadings in the said proceedings in the Company Law Board and City Civil Court would clear show that the 1st defendant after the death of the father with an evil intention to*

appropriate the said property and profits of the business had manipulated the accounts and records of the Company and hypothecating the assets of the Company including the immovable properties to meet the requirement of his personal business concerns..........”

54.It is apparent from the above that the plaintiff alleges oppression and mismanagement by the 1st defendant in respect of the affairs of the 2nd defendant Company and therefore it is also not a case where it s a simple suit for partition by way of intestate succession, like in a case of a son claiming the shares left behind by his deceased father in a Limited Company. Therefore, the proper remedy available to the plaintiff is to have approached the Company Law Board, under the Companies Act and not file a suit simpliciter for partition.

55.Having held that the plaintiff is not entitled to any right in respect of both the immovable properties as well as the shares and the plaintiff also having miserably failed the prove joint or even constructive possession of the schedule properties, the plaintiff cannot be entitled to any relief. The issues are answered accordingly.

56.For all the above reasons and discussions made herein above, the plaintiff is not entitled to any of the reliefs prayed for and consequently the suit is dismissed in respect of Item Nos.1 and 2 of Schedule A and Item No.2 of Schedule B, with costs.

08.11.2024

Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1 – Mr.Vijay Nahar

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Description
1.	Ex.P1	Certified copy of annual returns of the year ending 31.03.1998 of the 2nd defendant Company.
2.	Ex.P2	Notice to produce dated 18.07.2013 issued by the plaintiff's counsel to the counsel for the defendants.

3.	Ex.P3	Certified copy of the annual returns for the year ending 31.03.2000 of the 2nd defendant Company.
4	Ex.P4	Certified copy of the annual returns for the year ending 31.03.2001 of the 2nd defendant Company.
5	Ex.P5	Certified copy of annual returns for the year ending 31.03.2002 of the 2nd defendant Company.
6	Ex. P6	Office copy of the legal notice dated 25.02.2003.
7	Ex.P7	Original of the reply dated 22.03.2003 issued by the counsel for the 1st defendant to the plaintiff's counsel.
8	Ex.P8	Letter dated 08.06.2015 issued by the plaintiff's counsel to the defendants counsel.
9	Ex.P9	Reply letter issued by the defendants counsel to the plaintiff's counsel.

Witnesses examined on the side of the defendants:

D.W.1 -Mr.Anil Nahar

Documents marked on the side of the defendants:

S.No.	Exhibits	Description
1.	Ex.D1	Marriage invitation card.
2.	Ex.D2	Certified copy of the returns filed by the 2nd defendant company as on 31.12.1987.
3.	Ex.D3	Letter dated 5.12.1977.
4	Ex.D4	An undated letter has been given by me to the 2nd defendant.
5	Ex.D5	Undated letter has been given to me by the 2nd defendant company for sale of the machineries.
6	Ex.D6	Agreement dated 4.7.1981 executed between me and the 2nd defendant.

7	Ex.D7	Certified copy of the sale deed dated 04.08.1976 registered as Doc. No.727/1978 at SRO, T.Nagar.
8	Ex.D8	Certified copy of the sale deed dated 12.09.1973 registered as Doc. No.5612/1973 at SRO, North Chennai.
9	Ex.D9	Original letter dated 18.07.1977 executed by the plaintiff to M/s.Novelty exports expressing his desire to retire from the firm from 16.07.1977.
10	Ex.D10	Original letter dated 04.08.1977 executed by the plaintiff to M/s.Nahar & Company expressing his desire to retire from M/s.Nahar & Company.
11	Ex.D11	Original deed of release dated 14.09.1977 executed by plaintiff in favour of Dharamchand and Nahar HUF.
12	Ex.D12	Original letter dated 01.12.1977 executed by the plaintiff to the 2nd defendant company.
13	Ex.D13	Original affidavit dated 02.12.1977 under which the plaintiff has affirmed that he has left the HUF.
14	Ex.D14	Police complaint dated 27.03.1982 lodged by my father late D.C.Nahar against the plaintiff.
15	Ex.D15	Copy of the planning permission dated 12.10.1990 granted by MMDA (CMDA) granting planning permission for item 1 & 2 of suit A schedule property.
16	Ex.D16	Original unregistered Will dated 27.04.1983 written by my father.
17	Ex.D17	Original registered Will dated 26.12.1990 executed by my father registered as DOC.No.117/1990.
18	Ex.D18	Photocopy of the birth certificate of Vishnupriya stating that she was born on 11.06.1988 to Sreelatha and Nethaji and the birth certificate issued on 28.08.1996.
19	Ex.D19	Photocopy of the share transfer form executed by D.C.Nahar in respect of 11,250 shares in favour of Sreelatha Nahar on 24.06.1998.
20	Ex.D20	Certified copy of the marriage registration registered as Doc.No.29/1986 between Jothi Nethaji and V.Sreelatha.
21	Ex.D21	Office copy of the Form 32 alongwith the original receipt

		dated 20.12.1999.
22	Ex.D22	Office copy of the notice dated 17.07.2000 issued by my advocate to Sreelatha.
23	Ex.D23	Certified copy of the plaint filed in O.S.No.7760/2000 before City Civil Court, filed by the defendants against Shreelatha.
24	Ex.D24	Certified copy of the affidavit filed in I.A.No.20963/2000 in O.S.No.7760/2000 by defendant against Shreelatha seeking injunction.
25	Ex.D25	Certified copy of the counter filed by Shreelatha in ?.?.??.20963/2000 in O.S.No.7760/2000 before City Civil Court, Chennai.
26	Ex.D26	Certified copy of the reply filed by the defendant in ?.?.??.20963/2000 in O.S.No.7760/2000, VIth Assistant Judge, CCC, Chennai as petitioner/plaintiff in the above proceedings.
27	Ex.D27	Certified copy of the order passed in I.A.No.20963/2000 in O.S.No.7760/2000 dated 27.04.2001 passed by VIth Assistant Judge, CCC, Chennai dismissing the injunction petition.
28	Ex.D28	Certified copy of the written statement filed in O.S.No.7760/2000 by Sreelatha before CCC, Chennai.
29	Ex.D29	Complaint registered as FIR X No.40/2001 filed by Christopher against Sreelatha and another before Crime Branch, Chennai City.
30	Ex.D30	Copy of Tamil magazine 'Junior Vikatan' dated 21.02.2001 in which the affairs between Christopher and Sreelatha and the fact of Sreelatha cheating my father is also detailed therein.
31	Ex.D31	Original letter 05.02.2002 dated executed by Miss Sreelatha addressed to me.
32	Ex.D32	Photocopy of the share transfer deed executed by Sreelatha.
33	Ex.D33	The letter cum receipt dated 27.02.2002 executed by Sreelatha in favour of my wife.

34	Ex.D34	Notarised affidavit executed by Sreelatha.
35	Ex.D35	Letter cum receipt dated 27.02.2002 issued by Sreelatha to me.
36	Ex.D36	Letter dated 27.02.2002 addressed by Sreelatha to the 2nd defendant.
37	Ex.D37	Certified copy of the petition filed before Company Law Board in C.P.No.29/2001 by Sreelatha.
38	Ex.D38	Certified copy of the counter filed by me and the 2nd defendant in C.P.No.29/2001 before Company Law Board, Chennai.
39	Ex.D39	Joint memo of compromise filed in C.P.No.29/2001 before the Company Law Board, Madras entered into between Sreelatha, myself and the 2nd defendant.
40	Ex.D40	Certified copy of the order passed in C.P.No.29/2001 recording the compromise and disposing the company petition.
41	Ex.D41	Certified copy of Returns filed by the 2nd defendant company as on 30.09.1989.
42	Ex.D42	Certified copy of the Returns of the 2nd defendant company as on 30.09.1995.
43	Ex.D43	Certified copy of Returns filed by the 2nd defendant company as on 30.09.1988.
44	Ex.D44	Office copy of the Returns filed by the 2nd defendant company as on 31.12.1999.
45	Ex.D45	Certified copy of Returns filed by the 2nd defendant company as on 30.09.2003.
46	Ex.D46	Certified copy of Returns filed by the 2nd defendant company as on 30.09.2004.
47	Ex.D47	Original certificate issued by the Company Practising Secretary dated 19.11.2006.
48	Ex.D48	Original transfer deed executed by late D.C.Nahar in favour of Ashish Nahar.
49	Ex.D49	Photocopy of the IT Returns filed by Sreelatha for

		financial year 1998-99.
50	Ex.D50	Original membership certificate and registration issued to Mr.Anil Kumar HUF dated 31.03.1999.
51	Ex.D51	Original registration cum membership certificate issued to Raj Garments Proprietrix Rajkumari Nahar dated 27.11.1993.
52	Ex.D52	The register containing the minutes of the Annual General Body Meeting of the second defendant company for the period 28th October 1995 to 30th September 2014.
53	Ex.D53	The register of minutes of the meeting of Board of Directors of the second defendant company for the period 31st March 1995 to 22.12.2014.
54	Ex.D54	The register containing the members and shareholders of the 2nd defendant company from 1989 till now.
55	Ex.D55	Series (7 Nos) are the share certificates standing in my name. The share certificate numbers are 52,57 in folio No.2, 54 & 59 in folio No.4, 60,61 & 66 in Folio No.1.
56	Ex.D56	Series (5 Nos) are the share certificates standing in my wife, Rajkumar's name. The share certificate numbers are 53 & 58 in folio No.3,62 & 63 in folio No.1, 55 in Folio No.5.
57	Ex.D57	The share certificate standing in the name of my daughter Sonali. The share certificate number is 68 in folio No.1.
58	Ex.D58	Series (4 Nos) are the share certificates standing in the name of my son, Ashish Nahar. The share certificate numbers are 67,69 73 & 74 in folio No.1.

08.11.2024

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P.B.BALAJI,J.

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C.S.No.86 of 2004

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