

ORIGINAL CIVIL.

Before Sir Basil Scott, Chief Justice, and Mr. Justice Batchelor.

1911.
August 22.

R. D. SETHNA (PLAINTIFF), APPELLANT, v. THE NATIONAL BANK OF INDIA, LTD., AND ANOTHER, DEFENDANTS AND RESPONDENTS.*

Transfer of shares in company—Two claimants to shares standing in name of third party—Priority of title—When it prevails.

The rule laid down in *Moore v. North Western Bank*(1) followed: namely, that, as between two persons claiming title to shares in a company which are registered in the name of a third person, priority of 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 a present absolute unconditional right to have the transfer registered before the company was informed of the existence of a better title.

BAI MOOTIBAI, daughter of one Ambaram Motichand, deceased, filed a suit being Suit No. 31 of 1909 against the second defendant herein praying for the administration of the property and estate of the said Ambaram Motichand and for an account of his management of the property from the second defendant, who was the sole surviving executor of Ambaram. On the 1st day of March 1909 the plaintiff was by an order of the High Court of that date appointed Receiver in Suit No. 31 of 1909 of the estate of Ambaram. After the death of Ambaram the second defendant after he had become sole executor obtained possession of the certificates for twenty shares in the Textile Manufacturing Company and got them transferred to his name on the 13th September 1908. On the 22nd September 1908 the second defendant pledged ten of the twenty shares with the first defendant Bank and on the 16th October 1908 he pledged the other ten shares with the Bank for a total advance of Rs. 16,000 which he fraudulently applied to his own use. The plaintiff filed this suit for a declaration

* Original Suit No. 36 of 1910,

(1) [1891] 2 Ch. 599.

that the twenty shares above mentioned the certificates of which were in the possession of the first defendant formed portion of the estate of Ambaram and that the first defendant might be ordered to deliver the said twenty share certificates to the plaintiff. He further prayed that in the event of it being held that the first defendant Bank had a good title to the said share certificates as against the plaintiff as security for moneys advanced to the second defendant, that an account might be taken of the amount due in respect of such advances and that the plaintiff might be allowed to redeem the said twenty share certificates on payment of the amount found due to the first defendant and that the first defendant might be ordered to deliver the said twenty share certificates to the plaintiff on payment by the plaintiff of the amount found due to the first defendant.

The first defendant Bank submitted that they had had previous dealings with the second defendant, all of which had been of a satisfactory character and that they had no reason whatever for supposing that the said twenty shares did not belong to the second defendant absolutely. The Bank took the share certificates as security for the loans *bond fide* and without notice that any other person or persons whomsoever had any interest to the said shares, and they submitted therefore that the second defendant was entitled as between himself and the first defendant to deal with the shares and make a valid pledge thereof, that the pledge to them was a valid pledge and that they were under the circumstances *bond fide* pawnees for value and as such entitled to hold the shares as security for the said loans. They further submitted that in the event of the Court being of opinion that they had not acquired the legal title in the said shares, they were in equity entitled to retain the same until payment and that the plaintiff was in any event only entitled to the said shares on payment to them of such sum as might be secured thereon.

The case was heard before Davar, J., who passed a decree for the plaintiff declaring that the twenty shares above mentioned formed a portion of the estate of Ambaram Motichand and

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that the plaintiff was entitled to redeem the shares by paying to the first defendant Rs. 16,000 and interest due on the two loans of Rs. 8,000 each from the date of their respective advances. If the shares were not redeemed within a month the first defendant was to be entitled to apply for a transfer of the shares to themselves or their nominee and take all reasonable steps to realise their security.

Against this decree the plaintiff appealed.

Jinnah and Desai, for the appellant.

Jardine (Strangman, Advocate General, with him), for the respondent.

SCOTT, C. J. :—The plaintiff is the Receiver appointed in Suit No. 31 of 1909 for the administration of the estate of Ambaram Motichand who died in 1900. The second defendant is the surviving executor of the will of Ambaram. The first defendant, a Bank, is the holder of certificates and transferee of twenty shares in the Textile Manufacturing Company deposited with them as security by the second defendant.

The undisputed facts are that after the death of his co-executor in 1905 the second defendant obtained possession of the certificates for the shares above mentioned from the Bank of Bombay in which they were lodged and got them transferred in the books of the Textile Company into his own name from the name of the deceased Ambaram. On the 22nd of September 1908 he pledged ten of the twenty shares with the defendant Bank, and on the 16th of October 1908 he pledged the other ten shares with the Bank. Upon the security of these pledges he received Rs. 16,000 which he fraudulently applied for his own use. In the case of each pledge the certificates were accompanied by a transfer deed signed by the second defendant in blank.

On the 1st of March 1909, the plaintiff was appointed interim Receiver of the estate of Ambaram and the defendant was restrained by injunction from dealing with the estate in any way. On the 25th of March the defendant Bank sent in to the directors of the Textile Company a letter signed by

the second defendant intimating that the second defendant was desirous of selling and Mr. Hegarty, one of the officials of the Bank, had offered to purchase the shares and the defendant Bank asked the directors of the Textile Company to transfer the shares accordingly. Before this, however, the directors of the company had received notice from the Receiver not to transfer the shares and the company accordingly declined to accede to the request of the Bank.

The Articles of Association of the Textile Company have been put in evidence at the desire of this Court. From them it appears that the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the register books of the company and no transfer shall be registered unless the directors approve of this transferee. The directors may decline to register any transfer of shares if they do not approve of the proposed transferee and the company is at liberty to regard and attend to any notice of any equitable right, title or interest and to give effect thereto if the directors think fit.

In this state of facts the case is not distinguishable from that of *Moore v. North Western Bank*⁽¹⁾. Romer, J., said: "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 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 Selborne, 'a present, absolute, unconditional right to have the transfer registered, before the company was informed of the existence of a better title.'

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For that proposition the cases of *Societe Generale de Paris v. Walker*⁽¹⁾ and *Roots v. Williamson*⁽²⁾ are sufficient authorities, and I need not refer to the cases cited by the defendants in argument, which were decided previously to *Societe Generale de Paris v. Walker*⁽¹⁾ ".....

"Having regard to these articles, it appears to me to be clear that a transferee of shares in the company, even under a transfer right on every point of form, cannot say as against the company that he becomes a shareholder immediately on the execution of the transfer, or that the company immediately on the sending in the transfer had only to perform a ministerial act. Under these articles the directors clearly have a right to consider who the proposed transferee is, and have time given to them within which to approve of that person as transferee, and if they do not choose to approve within fourteen days of the proposed transferee as a proper person to be registered as a shareholder may decline so to register him, and the transferee will not be a shareholder, nor has he the right to compel the company to make him a shareholder....Before there was any approval by the board of the transfer, or, indeed, any consideration by the board of the transfer at all, the company... received notice of the plaintiffs' claim. Having received that notice they properly, in my judgment, refused further to proceed with the transfer until the plaintiffs in this case obtained the direction of the Court in the action which they at once instituted. The Court had seisin of the matter before anything was done, so far as the company was concerned".....

"Under these circumstances, it appears to me to be clear that the North Western Bank were not so invested with the full rights of shareholders before the Steamship Company had notice of the plaintiffs' claim, and have not (again, to use the words of Lord Selborne), acquired as against the company 'a present, absolute, unconditional right to have the transfer registered.' The company acted rightly in the matter in not proceeding with the consideration of the transfers sent in to

(1) *Societe Generale de Paris v. Walker* (1885) 11 App. Cas. 20 at p. 29.

(2) (1888) 33 Ch. D. 485.

them after the action was commenced and the motion made to obtain the direction of the Court as to the rights of the parties."

These observations *mutatis mutandis* are directly applicable to the case now before us. The result is that the plaintiff is entitled to the shares. We reverse the decree of the lower Court and pass a decree for the plaintiff in terms of paragraphs 1 and 2 of the prayer of the plaint.

Attorneys for the plaintiff: *Messrs. Tyabji, Dayabhai & Co.*

Attorneys for the defendants: *Messrs. Little & Co.*

Decree reversed.

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APPELLATE CIVIL.

FULL BENCH.

*Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Chandavarkar,
Mr. Justice Batchelor and Mr. Justice Heaton.*

TUKARAM BIN YEDU SAVANT AND ANOTHER (ORIGINAL DEFENDANTS 1 AND 4), APPELLANTS, v. NARAYAN RAMCHANDRA BHAGVAT (ORIGINAL PLAINTIFF), RESPONDENT.*

1911.

November 15.

Hindu Law—Deceased Hindu maiden—Stridhan—Competing heirs—Father's sister—Father's male gotraja sapindas five or six degrees removed—Preference to father's sister.

In the case of a deceased Hindu maiden leaving surviving her her father's sister and her father's male *gotraja sapindas* five or six degrees removed, her *stridhan* goes to her father's sister in preference to his said male *gotraja sapindas*.

SECOND appeal from the decision of V. M. Ferrers, Assistant Judge of Satara, confirming the decree of R. B. Gogte, Subordinate Judge of Karad.

The plaintiff sued to recover from the defendants Rs. 150 on account of three years' rent of certain land, alleging that the land originally belonged to one Nana Joti and that after Nana's death it descended to his only daughter and heir

* Second Appeal No. 594 of 1910.