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Deccan v. *Messrs. Vazir Sultan and Sons* (1), also pointed out that one has really got to look to the nature of the receipt in the hands of the assessee irrespective of any consideration as to what was actuating the mind of the other party.

There is no doubt that in this case the compensation which was paid by Koti Darbar and received by the assessee, was owing to the destruction of the assets which formed a fixed, as opposed to circulating, capital. The liquor contracts were the vehicles by means of which the assessee could enter into that business. As the entire field has been covered by the above decisions of the Supreme Court, it is not necessary, in order to find an answer to the question referred to us, to review the English decisions which have been considered in great detail by their Lordships. Applying the tests laid down by their Lordships of the Supreme Court, this question must be answered in the affirmative.

We are, therefore, of the view that on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 15,040/ represented compensation for loss of business and was receipt of a capital nature. The contention of the assessee, therefore, prevails and he is entitled to his costs which we assess at Rs. 250.

G. D. Khosla, C. J.— I agree.

G. D. Khosla, C. J.

R.S.

APPELLATE CIVIL

Before G. D. Khosla, C. J., and Tek Chand, J.

JARNAIL SINGH AND ANOTHER,—*Appellants*

versus

BAKHSHI SINGH AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 132/A of 1958.

1959

Dec., 24th

Companies Act (I of 1956)—Section 3(I)(iii)—Private Company—Article prohibiting transfer of shares except to

(1) A.I.R. 1959 S.C. 814

a shareholder—Transfer in favour of one of the several joint-holders—Whether valid—Joint shareholder—Whether a shareholder—"For the purposes of this definition"—meaning of—Restriction on right to transfer shares—Nature of—Interpretation of such restrictions—Manner of.

Article 8(a) of the private company provided that "no shareholder is entitled to transfer his shares to other shareholders of the company." A shareholder tranferred some of his shares in favour of one of the two joint-holders of shares in the company. The question arose whether the transfer was valid.

Held, that article 8(a) as it stands makes no distinction between one kind of shareholder and another. Joint-holders are members of the company to the same extent as an individual member, of course, there being certain necessary limitations and for certain purposes the joint-holders together are treated as one shareholder. There is no gainsaying the fact, however, that for purposes of membership of the company, no one out of the several joint-holders can be excluded from exercising rights and discharging duties attaching to a member, with the exception of those specifically mentioned in the Act and in the Articles of Association. Under the Indian Companies Act, 1913, the expression "shareholder" or "holder of a share" in so far as that Act is concerned, denotes no other person than "a member". Under section 30(2) of the Indian Companies Act, 1913 [section 41(2) of the Companies Act, 1956], a person who agrees to become a member of the company and whose name is entered in its register of members shall be a member of the company. These two requirements are satisfied by each of the several joint-holders of shares. Being members, though jointly with others, shares can be transferred to one of the joint holders provided that the requirements of section 2(1) (13) of the Indian Companies Act, 1913 [section 3(1) (iii) of the Companies Act, 1956], are not contravened.

Held, that in the proviso to section 2(1)(13) of the Indian Compaines Act, 1913 [section 3(1)(iii) of the Companies Act, 1956], the words "for the purposes of this definition" are significant. All that they convey is that

two or more persons holding one or more shares jointly in a private company shall be treated as a single member not for all purposes but "for the purposes of this definition" only. There are three features of a private company indicated in the definition section. Firstly, the right to transfer is restricted, and lastly, an invitation to the public to subscribe for the shares is prohibited. These two provisions have no bearing so far as the proviso is concerned. The proviso relates to the second, of the three requirements, which restricts the membership to fifty. In other words, according to this requirement, there can be fifty sets of joint-holders and joint-holders of each set shall be treated as a single member and the total number of members will thus be considered to be fifty. But the proviso makes it clear that two or more persons holding shares in a company jointly are not to be considered as a single member for all purposes. If joint-holders are entitled to be entered on the register in any order they choose, or to have part entered in one order and part in another, or that their joint holdings may be split up into two or more joint holdings, or that two joint-holders can form a quorum at a meeting, there seems to be absolutely no reason why a joint-holder whose name appears on the register of members of the company and who fulfils the qualifications, of "a member" under the Indian Companies Act, should not be treated as a shareholder.

Held, that the underlying object of incorporating restrictions on the right of transfer of shares is that the ownership should be confined to a close circle of members connected with one another by ties of kinship or friendship or closer relationship of a similar character, and with a view to avoid the intrusion of a stranger unless his admission is acceptable to the existing members. But it is one thing not to permit acquisition of shares of a private company freely by members of the public which charaterises the constitution of a private company from that of a public company; it is, however, a different thing to place stringent conditions the result of which might be to prevent transfers of shares between members and thereby virtually depriving them from exercising a fundamental and most useful right which is incidental to the exercise of proprietary rights. The Courts should hesitate to place an interpretation on the articles which may have

the effect of imposing restrictions on transferability which may be in restraint of trade and, therefore, opposed to public policy. The Courts should lean in favour of an owner's right to deal with his property at pleasure, unless such a right has been abridged in a particular manner, and in that case too, only to the extent of the abridgment. To treat one out of several joint-holders not to be a shareholder for purposes of transfer within the meaning of article 8(a) of the Articles of the Company would be tantamount to placing a construction which is neither justified by the language nor by the real object underlying the formation of a private company. Such a construction will be tantamount to an impingement on the owner's right to dispose of his shares beyond permissive inhibition.

Letters Patent appeal under Clause 10 of the Letter Patent against the judgment and decree of Hon'ble Mr. Justice Grover, passed in R.S.A. 923/57, dated the 24th March, 1958, affirming the decree of Shri H. D. Lomba, Senior Sub-Judge, with enhanced appellate powers, Ferozepore, dated the 23rd May, 1957, who affirmed that of Shri Surjit Singh Raikhey, Sub-Judge, 1st Class, Moga, dated the 28th December, 1956, whereby the plaintiff's suit was dismissed with regards to transfer of shares in favour of defendants Nos. 2 to 10 and was decreed for declaration in respect of the transfers of shares in favour of the defendant Nos. 11 and 12 made on 26th May, 1954, to the effect that the said transfers', were illegal and ultra vires *of the Articles of Association and further ordering that the suit regarding injunction asked for having become infructuous would stand dismissed and directing the parties to bear their own costs.*

BALRAJ TULI AND S. S. MAHAJAN, for Appellants.

D. N. AWASTHY, H. S. DOABIA AND RAJ KUMAR, for Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—This is a Letters Patent appeal from the judgment of Grover J. dismissing regular second appeal preferred by two defendants—appellants, Jarnail Singh and Behari Lal. In this case the trial Court, whose judgment was affirmed

by the learned Single Judge, had passed a decree in plaintiffs' favour for a declaration that transfers of shares made in favour of Jarnail Singh and Behari Lal defendants Nos. 11 and 12 were illegal and *ultra vires* of the Articles of Association of the Moga Transport Company (Private) Limited. Jarnail Singh and Behari Lal had unsuccessfully appealed to the Senior Subordinate Judge, Ferozepore, and their appeal to the High Court, was also dismissed by the learned Single Judge. This is an appeal on their behalf under the Letters Patent of this Court.

On 26th of May, 1954, the Company had sanctioned the transfer of ten shares held by Bachhittar Singh in favour of Jarnail Singh, defendant No. 11, and had also sanctioned transfer of five shares held by Milkhi Ram in favour of Behari Lal, defendant No. 12. These transfers—besides some other transfers which are no longer the subject-matter of any dispute—were challenged by the plaintiff and a relief by way of declaratory decree was prayed and which has been granted. On the parties' pleadings, the following four issues were framed, but at this stage we are concerned with the first issue in so far as it affects the case of the contesting defendants Nos. 11 and 12—

(1) Whether the transfer of shares in favour of defendants 2 to 12 is illegal and *ultra vires* for the reasons given in paras 5 to 7 of the plaint, if so, its effect?
(2) Is the suit within time?
(3) Whether the plaintiff is estopped by his conduct from suing?
(4) Relief ?

On the register of members of this Company, there are two sets of joint shareholders, (1) Karnail Singh and Jarnail Singh, (2) Girdhari Lal and

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Behari Lal. The two transfers sanctioned by the Company on 26th of May, 1954, were in favour of Jarnail Singh and Behari Lal, respectively, each in their individual capacity. The contention raised on behalf of the plaintiff and which found favour with the learned Single Judge and the two Courts below was that although Jarnail Singh and Karnail Singh as two joint-holders, and similarly Behari Lal and Girdhari Lal as two joint-holders, were members of the Company but a single joint holder cannot be deemed to be a shareholder and a member of the Company within the meaning of article 8(a) of the Articles of Association of the Company. For ready reference, the relevant articles of the Articles of Association of the Company are reproduced below:—

> "Article 2. The Company is a 'Private Company' within the meaning of section 2(1) (13) of the Indian Compaines Act, 1913, and accordingly (1) no invitation shall be issued to the public to subscribe for any share, debentures or debenture stock of the Company (2) the number of the members of the Company (exclusive of persons in the employment of the Company) shall be limited to fifty, provided that for the purposes of this provision, where two or more persons hold one or more shares, in the Company jointly they shall be treated as single member and (3) the right to transfer the shares of the Company is restricted in manner and to the extent hereinafter appearing.
>
> Article 8(a) No shareholder will be entitled to transfer his shares except to other shareholders of this Company.

Article 11. Each shareholder and director will have only one vote irrespective of the number of shares he holds.

Article 12. The qualification of a director shall be holding in his own right and not jointly with any other person one or more shares of the Company."

The only question that has to be examined is whether having regard to the constitution of the Company, which is a 'private company' within the meaning of section 2(1) (13) of the Indian Companies Act, 1913, sanction to transfer of shares by a shareholder in favour of one out of several joint-holders is in contravention of article 8(a) of the Articles of Association. In other words, whether Jarnail Singh, a transferee in one case, and Behari Lal, a transferee in the other case, can be considered a shareholder of the Company.

It was contended on behalf of the plaintiff that one of the joint-holders cannot be deemed to be a shareholder for purposes of transfer of shares. The plaintiff has stressed that joint-holders together are to be treated as one shareholder for purposes of private companies.

Mr. Tuli, learned counsel for the appellants, has drawn our attention to regulations 6,13,21,61 and 100 of Table A of the First Schedule to the Indian Companies Act, 1913, which are applicable to this Company.

According to regulation 6, delivery of one certificate specifying the shares held by joint-holders to one of several joint-holders shall be sufficient delivery to all.

Under regulation 13, the joint-holders of a share are jointly and severally liable to pay all calls in respect thereof.

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Under regulation 21, in the case of a share registered in the name of two or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

Regulation 61 provides that in the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined in the order in which the names stand in the register of members.

Lastly, Regulation 100 lays down that if several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

On the strength of the above regulations it was argued that everyone of the joint-holders is a shareholder in the Company.

In *Grundy* v. *Briggs* (1), under article 61 of the defendant-company's Articles of Association, it was provided that "each of the directors shall be the registered holder of not less than twenty shares". The plaintiff held five shares in his own name. He and some others were executors of a shareholder in that company. The executors executed a transfer of fifteen of the testator's 112 shares to the plaintiff for a nominal consideration in order that he might hold the required number of shares and thus qualify himself for being a director of the company. The point that arose for consideration before the Court was whether the plaintiff was a registered holder of not less than twenty shares when he and others were jointly registered as holders of 112 shares. The company was, in the words of Eve J., "more or less in

(1) L.R. (1910) 1 Ch. D. 444

the nature of a private company". A contention was raised in that case that a person was not qualified as a director by the holding of shares jointly with other persons. This contention was repelled by Eve J. and he held that the plaintiff was qualified to be a director of the company by virtue of his registration as a joint-holder of the testator's shares. Mr. Tuli has, with reason, submitted that under analogous circumstances a joint-holder could also be a transferee in his individual capacity just as he can be a director.

In *Burns* v. *Siemens Brothers Dynamo Works, Limited* (1), two persons, Burns and Hambro, were the registered joint-holders of a large number of shares in the company. Under the articles Burns alone as the first named holder was entitled to vote, and the second named holder Hambro could neither vote nor could be appointed proxy for a poll, so that if Burns was ill or absent the voting power was lost. It was held that in order to enable Burns and Hambro effectually to exercise their voting power in all circumstances, they were entitled to have their holding split into two joint holdings with their names in different orders, and it was ordered that the register be altered accordingly. In the above case, the observations of Warrington J. in *In re T.H. Saunders and Co., Ltd.* (2), were cited with approval. He said—

> "It seems to me that the joint holders of shares are entitled to arrange among themselves which of them shall stand first on the register of members and exercise on behalf of all the right of voting which belongs to them collectively."

(1) L.R. (1919) 1 Ch. D. 225
(2) (1908) 1 Ch. 415 (423)

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Our attention has also been drawn to an Australian case *Re Transcontinental Hotel Ltd.*, (1), referred to in Volume I of Palmer's Company Precedents, Seventeenth Edition, at page 486, in the footnote. In that case the articles of association of a limited company required that a quorum of two members should be personally present at a meeting of the company to pass a special resolution. It was held that the presence of two persons who were registered as joint-holders was a sufficient compliance with the articles of association. In other words, for purposes of quorum, two joint-holders were treated as two members of the company.

In *Naraindas Munmohandas* v. *The Indian Manufacturing Co., Ltd.*, (2), which was a case of a public company, it was held that every joint shareholder was a member and it was not correct to say that when three or four persons agreed to accept shares in a company, they constituted a single member. Chagla, C.J., while distinguishing the case of a public company from that of a private company, said—

> "In our opinion, the real key to the construction of Section 30(2) is to be found in the Indian Companies Act, itself, Section 2 (1) (13) defines a 'private company' and a private company means a company which among other things limits the number of its members to fifty not including persons who are in the employment of the company. Then there is a very important and significant proviso and it is to the effect that where two or more persons hold one or more shares in a company jointly they shall,

(1) (1947) S.A.S.R. 49
(2) A.I.R. 1953 Bom. 433

for the purposes of this definition, be treated as a single member. If Mr. Desai's contention were sound, it was absolutely unnecessary to enact this proviso. But the proviso became necessary because but for it, every joint shareholder would be a member and if every joint shareholder was to be counted as a member the number might go beyond fifty to which the private company was restricted, and therefore the proviso specifically states that where two or more persons hold one or more shares in a company jointly, they are not a single member but they shall be treated as a single member for the purposes of the definition. Therefore, only in the case of a private company by a legal fiction joint shareholders are not to be considered as members but to be treated as a single member. Therefore, it is clear that where we are dealing with a public company, every joint shareholder is a member, and Mr. Desai's contention is not correct that when three or four persons agree to accept shares in a company they constitute a single member and not as many members as there are applicants".

Under article 8(a) no shareholder is entitled to transfer his shares except to other shareholders of the Company. This article as it stands makes no distinction between one kind of shareholder and another. Joint-holders are members of the Company to the same extent as an individual member, of course, there being certain necessary limitations and for certain purposes the joint-holders together are

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treated as one share-holder. There is no gain saying the fact, however, that for purposes of membership of the Company, no one out of the several joint-holders can be excluded from exercising rights and discharging duties attaching to a member, with the exception of those specifically mentioned in the Act, and in the Articles of Association. Under the Indian Companies Act, 1913, the expression "shareholder" or "holder of a share" in so far as that Act, is concerned, denotes no other person than "a member", *vide Messrs Howrah Trading Co., Ltd.*, v. *Commissioner of Income Tax Central, Calcutta* (1).

Section 2(1) (13) of the Indian Companies Act, 1913, defines "private company" as under:—

> "private company' means a company which by its articles— ,
>
> (a) restricts the right to transfer its shares, if any; and
>
> (b) limits the number of its members to fifty not including persons who are in the employment of the company; and
>
> (c) prohibits any invitation to the public to subscribe for the shares, if any, or debentures of the company:
>
> Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member".

The learned counsel for the respondent places emphasis on the proviso and contends that two

(1) A.I.R. 1959 S.C. 775 (779)

be treated as a single member and from this he argues, that neither Jarnail Singh nor Behari Lal in their individual capacity could be treated as a member of the Company.

Under section 30(2) of the Indian Companies Act, 1913, a person who agrees to become a member of the Company, and whose name is entered in its register of members, shall be a member of the company. These two requirements are satisfied by Jarnail Singh and also by Behari Lal. Being members, though jointly with others, shares can be transferred to them, provided, however, the requirements of section 2(1) (13) are not contravened. At present the number of members of the Company does not exceed 24 and after the number reaches the limit of 50, the Directors will refuse to sanction the transfers but till then I see no bar to the Directors sanctioning the transfers.

In the proviso the words "for the purposes of this definition" are significant. All that they convey is that two or more persons holding one or more shares jointly in a private company shall be treated as a single member not for all purposes but "for the purposes of this definition" only. There are three features of a private company indicated in the definition section. Firstly, the right to transfer is restricted, and lastly, an invitation to the public to subscribe for the shares is prohibited. These two provisions have no bearing so far as the proviso is concerned. The proviso relates to the second, of the three requirements, which restricts the membership to fifty. In other words, according to this requirement, there can be fifty sets of joint-holders and joint-holders of each set shall be treated as a single member and the total number of members will thus be considered to be fifty. But the proviso makes it clear that two or more persons holding shares in a company jointly

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are not to be considered as a single member for all purposes. If joint-holders are entitled to be entered on the register in any order they choose, or to have part entered in one order and part in another, or that their joint holdings may be split up into two or more joint holdings, or that two joint-holders can form a quorum at a meeting, there seems to be absolutely no reason why a joint-holder whose name appears on the register of members of the company and who fulfils the qualifications of "a member" under the Indian Companies Act, 1913, should not be treated as a shareholder.

Article 8(a) of the Articles of Association forbids transfer of shares to persons who are not already shareholders of the Company. Such a provision is usually contained in the Articles of Association of private companies and the underlying object of incorporating restrictions on the right of transfer of shares is that the ownership should be confined to a close circle of members connected with one another by ties of kinship of friendship or closer relationship of a similar character, and with a view to avoid the intrusion of a stranger unless his admission is acceptable to the existing members. The restrictions which a private Company is obliged to require by its Articles have been left undefined as they may be of wide and varied character. The Articles of Association also confer a right on the directors to refuse to register transfers of shares in the capital of the Company without the previous sanction of the directors and who may withhold their sanction without the previous sanction of the directors and who may withhold their sanction without assigning any reason. The Directors of this Company have such an absolute discretion under article 9 of the Articles of Association of this Company. Pre-emption clauses of various types are usually found in the Articles of

private companies, the object being in consonance with the character of a private company or a "close corporation" as it is called in America. But it is one thing not to permit acquisition of shares of a private company freely by members of the public which characterises the constitution of a private company from that of a public company; it is, however, a different thing to place stringent conditions the result of which might be to prevent transfers of shares between members and thereby virtually depriving them from exercising a fundamental and most useful right which is incidental to the exercise of proprietary rights.

In the case of *Burns* v. *Siemens Brothers Dynamo Works, Limited* (1), at page 231, Astbury J. observed—

> "The Dynamo Company and its directors are, I think, under an obligation in law not to prevent a fair and reasonable exercise by the members of their rights of dominion in their own property, consistent with the constitution of the company. * * *".. .

I canot construe article 8(a) so as to exclude the transferee from being a shareholder of the Company when his name, along with that of another, is borne on the register of members of the Company. Placing a narrow construction on this article, as is contended for by the respondent, will be putting an unreasonable restraint upon the alienation of property. The Courts should hesitate to place an interpretation on the articles which may have the effect of imposing restrictions on transferability which may be in restraint of trade and, therefore, opposed to public policy. The Courts should lean in favour of an owner's right

(1) L.R. (1919) 1 Ch. D. 225

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to deal with his property at pleasure, unless such a right has ben abridged in a particular manner and in that case too, only to the extent of the abridgment. In my judgment, to treat one out of several joint-holders not to be a shareholder for purposes of transfer within the meaning of article 8(a) of the Articles of the Company would be tantamount to placing a construction which is neither justified by the language nor by the real object underlying the formation of a private company. Such a construction will be tantamount to an impingement on the owner's right to dispose of his shares beyond permissive inhibition.

I find nothing in the Articles of Association or in the Indian Companies Act, prohibiting a transfer of shares to a joint-holder in his individual capacity. Joint-holders as such are not a distinct legal entity apart from the individual owners who jointly own one or more shares. A transfer of shares whether made to an individual shareholder or to joint-holders collectively is not within any statutory ban, or within the prohibition of the Articles of Association of the Company so long as the total number of members of the private Company, not including persons who are in the employment of the Company, does not exceed fifty as required by section 2(1) (13) (b) of the Indian Companies Act, 1913, which with slight modifications corresponds to section 3(1) (iii) (b) of the Companies Act, 1956.

For the above reasons, the impugned transfers are not tainted with any illegality and suffer from no flaw or lacuna.

In the result, this Letters Patent appeal is allowed and the plaintiff's suit is dismissed with costs of this appeal.

G. D. Khosla, C. J.

G. D. KHOSLA, C.J.,— I agree.