

A

BABU LAL & ORS.

v.

M/S VIJAY SOLVEX LTD. & ORS.

(Civil Appeal No. 7174 of 2014)

AUGUST 4, 2014.

B

**[SUDHANSU JYOTI MUKHOPADHAYA AND
S.A. BOBDE, JJ.]**

C

Injunction: Suit for declaration, mandatory injunction, rendition of accounts and permanent injunction - Interim order of temporary injunction by trial court - Trial court ordered that the appellants-applicants and non-applicants no.1 to 31 and 36 to 43 shall not sell/transfer the immovable properties as mentioned in Schedule "Ka" to "Cha" and nor shall they

D

create any substantial charge on the said properties and the Companies/Partnership firms controlled and run by the parties of which details have been given in Schedule "Ka" to "Cha" regarding them the audited accounts of income and expenditure shall be presented before the Court - High Court

E

perused the family settlement and modified the interim order and set aside the temporary injunction granted in favour of appellants and confirmed that part of the order requiring production of audited/unaudited accounts of the companies/partnership firms run by the parties - On appeal, held: In the

F

instant case, the parties have raised similar pleas which were taken before the High Court - However, while dealing with matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to maintainability of the suit and the family settlement reached between the parties - The impugned

G

judgment is set aside - Matter remitted to High Court for fresh disposal.

H

In a suit for declaration, mandatory injunction, rendition of accounts and permanent injunction against

the defendants/non-applicants, the trial court found that the plaintiffs have made out partially a prima facie case. The application for temporary injunction against the non-applicant and the counter temporary injunction application filed on behalf of the non-applicants were partly allowed. The trial court ordered that the applicants and non-applicants no.1 to 31 and 36 to 43 shall not sell/transfer the immovable properties as mentioned in Schedule "Ka" to "Cha" and nor shall they create any substantial charge on the said properties and the Companies/Partnership firms controlled and run by the parties of which details have been given in Schedule "Ka" to "Cha" regarding them the audited accounts of income and expenditure half yearly/annually whichever is got done in the normal sequence shall be presented before the Court. Apart from that the other prayers which were made by both the parties were rejected.

A

B

C

D

Aggrieved, the non-applicants challenged the said order before the High Court. The High Court perused the family settlement between the parties and modified the interim order and set aside the temporary injunction granted in favour of plaintiffs/appellants and confirmed that part of the order requiring production of audited/unaudited accounts of the companies/partnership firms run by the parties. The instant appeal was filed challenging the order of the High Court.

E

F

Disposing of the appeal and remitting the matter to High Court for fresh disposal, the Court

HELD: In the instant case, the parties have raised similar pleas which were taken before the High Court. However, while dealing with a matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to

G

H

A maintainability of the suit and the family settlement reached between the parties. The impugned judgment is set aside. [Para 7] [1136-F-G]

B *Reliance Natural Resources Ltd. v. Reliance Industries Ltd. (2010) 7 SCC 1: 2010 (5) SCR 704; Sangram Singh P. Gaekwad and Ors. v. Shantadevi P. Gaekwad (D) Through LRs. & Ors. (2005) 11 SCC 314: 2005 (1) SCR 624 - referred to.*

Case Law Reference:

C

2010 (5) SCR 704	Referred to	Para 5
2005 (1) SCR 624	Referred to	Para 5

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7174 of 2014.

From the Judgment and Order dated 14.03.2012 in CMA No. 2218/2011 passed by the High Court of Rajasthan at Jaipur.

E WITH

C.A. No. 7175 of 2014, C.A. No. 7195-7201 of 2014 and C.A. No. 7177 of 2014 @ SLP (C) No. 18420/2012.

F H.P. Raval, Dushyant Dave, Shiv Mangal Sharma, Ramesh Singh, Akshat Anand, Abhinandini Sharma, Sitesh Narayan Singh, Sharmila Upadhyay for the appellants.

G Dr. Abhishek Manu Singhvi, Amrinder Sharan, Gopal Jain, Indu Malhotra, Rakesh Dwivedi, Narendera M. Sharma, Abhishek Sharma, J.k. Chaudhary, Shubhra Mishra, Ankur Sood, Amol Vyas, Rupesh Kumar, Anjali Chauhan, Shrey Kapoor, T. Mahipal, Ajay Choudhary, Ajay Sharma, Tara Chandra Sharma, V. Mohana, Sushma Suri, P.N. Purf, Milind Kumar for the Respondents.

H

The Judgment of the Court was delivered by

A

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. In these appeals the appellants have challenged the common judgment and order dated 14th March, 2012 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in S.B. Civil Misc. Appeal No. 2218 of 2011 etc. By the impugned judgment, the High Court modified the interim order dated 10th February, 2011 passed by the Additional District Judge No.3 Jaipur Metropolitan Magistrate, Jaipur (hereinafter referred to as, "the Lower Court") in Civil Misc. Case No.36/2010, whereby the Lower Court partly allowed the application of the appellants-original plaintiffs seeking temporary injunction under Order XXXIX Rule 1,2 of CPC. The High Court set aside the temporary injunction granted in favour of plaintiffs/appellants by the Lower Court and confirmed that part of the order requiring production of audited/unaudited accounts of the companies/partnership firms run by the parties.

B

C

D

3. The present appeals arise from the following sequence of facts.

E

Plaintiffs/appellants-Babulal and others filed a suit for declaration, mandatory injunction, rendition of accounts and permanent injunction against the defendants/non-applicants. The Lower Court noticed that the properties which the plaintiffs presented in the Schedules "Ka" to "Cha" are basically immovable properties, companies and partnership firms regarding which both the parties have claimed ownership. Taking into consideration that the dispute between the parties has arisen after the year 2007 and the cases are pending before the Company Law Board and if a restraint is not imposed upon the transfer of the aforesaid properties it will

F

G

H

A lead to multiplicity of litigation and the parties will entangle in litigation, the Lower Court observed that plaintiffs/appellants have made out partially a prima facie case and held that the issue of balance of convenience and irreparable loss are in favour of the plaintiffs/appellants. Resultantly, the application of the plaintiffs-appellants for temporary injunction against the non-applicants and the counter temporary injunction application filed on behalf of the non-applicants were partly allowed and it was ordered that till the decision of the original suit:-

C 1. The applicants and non-applicants no.1 to 31 and the non-applicants no.36 to 43 shall not sell/transfer the immovable properties as mentioned in Schedule "Ka" to "Cha" and nor shall they create any substantial charge on the said properties.

D 2. The Companies/Partnership firms controlled and run by the parties of which the details have been given in Schedule "Ka" to "Cha" regarding them the audited accounts of income and expenditure half yearly/annually whichever is got done in the normal sequence shall be presented before this Court. Apart from this the other prayers which have been made by both the parties are rejected.

E 4. The non-applicants preferred different miscellaneous appeals against the aforesaid interim order of injunction before the High Court. The non-applicants-respondents herein made the following submissions:

F (a) The suit of the plaintiffs in the present form is not maintainable in the eyes of law, inasmuch as it has been filed by Sh. Babulal along with Saurabh Agrotech Pvt. Ltd., which is a company incorporated under the Companies Act, two partnership firms registered under the Partnership Act jointly and the G HUF of Babulal, seeking partition of the properties mentioned in the Schedules annexed to the plaint and that too against the set of companies, which H have been shown as the assets of the HUF.

- (b) Plaintiff-Babulal though seeking partition of the joint family properties has not impleaded his own sons and other coparceners as parties to the suit and has not included the properties owned and managed by the plaintiffs in the schedules annexed to the plaint. Therefore, it was argued that the suit itself is bad for non-joinder of necessary parties and of causes of action and the suit is not tenable in the eye of law. A B
- (c) The Lower Court failed to consider the contentions raised by the concerned defendants and also the documents produced by them. C

5. On the other hand, learned counsel for the plaintiffs-appellants made the following submissions: D

(a) The Lower Court has passed the impugned order which is just and proper after considering the prima facie case, irreparable injuries likely to be caused to the plaintiffs and the balance of convenience. E

(b) On 20th December, 2007, a family settlement has taken place between Niranjana Lal Data Group which belong to the defendants and Babu Lal Data Group which belong to the plaintiffs and that the said settlement was signed by Mr. Vijay Data for Niranjana Lal Data Group and by Babu Lal Data for Babu Lal Data Group. The said settlement was also partly acted upon by the defendant-Niranjana Lal and other coparceners and therefore, they cannot be permitted to back out from the said settlement. F

Learned counsel also placed reliance upon decisions of this Court in *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* (2010) 7 SCC 1 and in the case of *Sangram Singh P. Gaekwad and others v. Shantadevi P. Gaekwad (D) Through LRs. & Ors.* (2005) 11 SCC 314 and submitted that though a company incorporated under the Companies Act is G H

A a body corporate, in certain situations, its corporate veil can
be lifted and that the suit for partition could be filed against
companies also.

B It was further contended on behalf of the plaintiffs-
appellants that the family settlement need not be signed by
coparceners and that if a mere memorandum of family
arrangement was prepared with regard to the arrangement
which had already taken place; such a document did not require
C registration. The family settlement made by the parties bona
fide by making fair and equitable division of the properties
amongst various members of the family must be respected.

6. The High Court by impugned judgment and order dated
14th March, 2012 observed as follows:

D *"6.....It is also significant to note that the plaintiffs
have impleaded the companies, partnership firms and
proprietary concerns and HUFs as the party defendants,
and the said companies and firms have also been
shown as the properties or the assets of the HUF in the
E schedule 'Gha' annexed to the plaint. This court fails to
understand as to how the companies which are
incorporated under the Companies Act having perpetual
seal and separate entity could be the assets of the HUF
as alleged by the plaintiffs and as to how the companies
F could be divided by metes and bounds by way of partition
as prayed for in the suit. The plaintiffs in the suit have
also prayed for mandatory injunction seeking direction
against the defendant-companies alongwith other
defendants to act upon the family settlement, alleged to
G have taken place on 20.12.2007 between the Niranjan
Lal Data Group and Babu Lal Data Group, and have also
sought the direction against the said companies to
execute the documents and handover the possession of
the properties of the said companies and firms etc. This
H court also fails to understand as to how the alleged family*

settlement between the NLD Group and BLD Group would be binding to the defendant companies and firms, apart from the issue as to whether the alleged document dated 20.12.2007 could be called a family settlement. Under the circumstances this court finds much substance in the submission made by the learned counsel for the appellants that the suit filed by the plaintiffs is not only bad for mis-joinder of parties and of causes of action, but also for non-joinder of necessary parties and that the suit in the present form would not be maintainable in the eye of law.

7. *So far as merits of the case are concerned, according to the respondents-plaintiffs, all the properties mentioned in the Schedules 'Ka' to 'Chha' annexed to the plaint, were purchased from the nucleus of the joint family properties, and as per the family settlement dated 20.12.07, the said properties were required to be divided amongst the family members of the plaintiff No. 1 and the defendant Nos.1 to 9. In this regard, it is pertinent to note that the entire suit of the plaintiffs is based on the so-called family settlement which had allegedly taken place between the NLD group and BLD group on 20.12.07. From the bare perusal of the said document it transpires that it is the minutes of the meeting of Data Group Family dated 20.12.07, which was signed by Mr. Vijay Data for NLD Group and Mr. Babu Lal Data for BLD Group. Apart from the fact that there is not a whisper in the said document that the corpus of the companies mentioned in the said document was provided by the HUF or that the other properties mentioned in the said document were the HUF properties, the said document has also not been signed by the other coparceners of the alleged HUF except by Mr. Vijay Data and Mr. Babu Lal Data. Such a document by no stretch of imagination could be said to be a family settlement. However, even*

A

B

C

D

E

F

G

H

A *if it is believed to be a family settlement, and even if it is held that the same was not required to be signed by all the coparceners, then also there is nothing on the record to suggest that it was a memorandum prepared after the family arrangement which had already been made earlier,*
 B *not required to be registered.*

C *"9. In this regard it is pertinent to note that though the concerned defendants had raised contentious issues as regards the maintainability of the suit, mis-joinder of parties and of causes of action, suppression of material facts by the plaintiffs etc., the lower court has not considered the same and has held that the plaintiffs had established the prima facie case in their favour. In the opinion of this court such a finding of the lower court in the impugned order is not only erroneous but also perverse. When the suit on the face of it suffered from the mis-joinder of parties and of causes of action and was not prima facie tenable in the eye of law, the lower court has committed serious error of law and facts in holding that the plaintiffs had established a prima facie case. If the plaintiffs were not entitled to the final reliefs in the suit, they could not be granted temporary injunction as prayed for during the pendency of the suit."*
 D
 E

F 7. We have heard learned counsel for the parties and have perused the record. In the present case, the parties have raised similar pleas which were taken before the High Court. However, we are of the opinion that while dealing with a matter relating to vacation of order of temporary injunction, it was not open for the High Court to give a finding on the main issue relating to maintainability of the suit and the family settlement reached between the parties.
 G

H 8. In view of the finding aforesaid, we are inclined to interfere with the judgment and order dated 14th March, 2012 passed by the High Court of Judicature for Rajasthan, Bench

BABU LAL & ORS. v. VIJAY SOLVEX LTD.
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

1137

at Jaipur in S.B. Civil Misc. Appeal No.2218 of 2011 etc. We, accordingly, set aside the impugned judgment and remit back the matter to the High Court for its fresh disposal after hearing the parties. **A**

9. The appeals stand disposed of with aforesaid observations. **B**

Devika Gujral

Appeals disposed of.