

Subhra Mukherjee & Anr. C vs Bharat Coking Coal Ltd. & Ors on 8 March, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1203, 2000 (3) SCC 312, 2000 AIR SCW 865, 2000 CLC 677 (SC), 2000 (2) SCALE 259, 2000 (4) COM LJ 50 SC, 2000 SCFBRC 230, 2000 (4) SRJ 45, (2000) 3 BLJ 60, (2000) 4 COM LJ 50, 2000 (3) BLJR 2006, (2000) 3 JT 55 (SC), 2000 (2) ALL CJ 876, 2000 ALL CJ 2 876, (2000) 1 RENCER 306, (2000) 101 COMCAS 257, (2000) 2 RECCIVR 217, (2000) 38 CORLA 311, (2000) 5 SUPREME 88, (2000) 2 SCALE 259, (2000) WLC(SC)CVL 288, (2000) 39 ALL LR 211, (2001) 1 ALL RENTCAS 67, (2000) 3 PAT LJR 116

Author: Syed Shah Mohammed Quadri

Bench: S.Rajendra Babu, S.S.M.Quadri

PETITIONER:

SUBHRA MUKHERJEE & ANR. C

Vs.

RESPONDENT:

BHARAT COKING COAL LTD. & ORS.

DATE OF JUDGMENT: 08/03/2000

BENCH:

S.Rajendra Babu, S.S.M.Quadri

JUDGMENT:

Syed Shah Mohammed Quadri, J.

This appeal is directed against the judgment and decree of the High Court of Judicature at Patna (Ranchi Bench), in Appeal from Appellate Decree No.21 of 1979 (R) passed on November 11, 1997. The appellants-plaintiffs filed Title Suit No.28(A) of 1976 in the court of the Subordinate Judge, Ist Court, Dhanbad, praying for a declaration of title in respect of a bungalow and a piece of land measuring 1.38 acres consisting of survey plot Nos. 91 to 94 appertaining to Khatian No.2 of mouza Nichitpur (hereinafter referred to as the suit property) and for permanent injunction restraining the respondents from interfering with their possession. The suit property was owned by M/s.Nichitpur Coal Company Private Limited (hereinafter referred to as the Company), which is registered under

the Indian Companies Act. By a resolution of the board of directors of the Company dated September 21, 1970, it was resolved to sell the suit property to the appellants for a consideration of Rs.5,000/-. However, the appellants paid Rs.7,000/- to one of the directors under receipt dated December 30, 1970 (Ext.10). An agreement to sell the suit property to the appellants for Rs.7000/- (Rs.5000/- as consideration of the Bungalow and Rs.2000/- as price of the land) was executed by the Company on January 3, 1971 (Ext.8). The Company executed the sale deed in their favour on March 20, 1972 (Ext.9). The Coal Mines (Nationalisation) Act, 1973 (for short the Act of 1973) came into force on May 1, 1973 and from that date the right, title and interest of the owners in relation to the coal mines specified in the Schedule appended to the Act of 1973 (the said Company is mentioned at serial No.133 of the Schedule) vested in the Central Government (they will hereinafter be referred to as the vested properties). Thereafter under the order of the Central Government, the vested properties stood transferred to and vested in the Government Company named M/s. Bharat Coking Coal Ltd. (for short BCCL). As the appellants did not hand over the possession of the suit property to BCCL, it initiated proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the P.P. Act) for their eviction from the suit property on October 15, 1976. Being faced with eviction proceedings under the P.P. Act, the appellants filed the said suit against BCCL for declaration of their rights in, title to and interest over the suit property. The suit was resisted by BCCL, inter alia, on the ground that with effect from the appointed date the suit property vested in it and that the alleged sale transaction in favour of appellants was sham, collusive, without any consideration and was brought into existence to avoid the effect of vesting of the suit property under the Act of 1973. It was also stated that the appellants are wives of the directors of the Company, who are real brothers. On appreciation of the evidence placed before it, the trial court held that the appellants got no title to the suit property and were, therefore, not entitled to any relief and thus dismissed the suit on September 22, 1977. Aggrieved by the judgment and decree of the trial court, the appellants filed Title Appeal No.147 of 1977 before the learned District Judge, Dhanbad. On reappraisal of the evidence on record, the learned District Judge allowed the appeal and set aside the judgment and decree of the trial court and decreed the suit of the appellants, as prayed for on October 6, 1978. The BCCL then unsuccessfully carried the matter, in second appeal, before the High Court of Judicature at Patna (Ranchi Bench). The judgment and decree of the High Court dismissing the second appeal on October 7, 1985, was challenged by BCCL in Civil Appeal No.838 of 1986 in this Court. On August 17, 1993, this Court set aside the impugned judgment and decree of the High Court and remitted the matter to the High Court to decide the following two points:- (1) Whether transaction in question is a bona fide and genuine one or is a sham, bogus and fictitious transaction as held by the trial court; and (2) Whether in view of Section 3(1) read with Section 2(h) (xi) and the entry at serial No.133, in the Schedule to the Act, the property in question stood transferred to and vested in the Central Government free of all encumbrances, on the appointed day under the Coal Mines (Nationalisation) Act.

It was observed that the result of the second point would depend on the decision of point No.1. However, after remand, in view of the submission made by the learned counsel for BCCL that point No.2 was covered by the judgment of this Court in Bharat Coking Coal Ltd. Vs. Madanlal Agrawal [1997 (1) SCC 177], the High Court decided it first. On point No.1 the High Court restored the judgment of the trial Court holding that the transaction of sale between the appellants and the Company was sham and bogus and was entered into to avoid the vesting of the suit property in

Central Government under Section 3(1) of the Act of 1973 and thus allowed the second appeal filed by the BCCL on November 11, 1997. That judgment and decree are under challenge in this appeal. Mr.A.K.Srivastava, learned senior counsel appearing for the appellants, pointed out that contrary to the observation of this Court, the High Court has proceeded to decide point No.2 first and that resulted in prejudice to the appellants. He argued that the High Court found that the appellants had proved three facts, namely, (i) the board of directors of the Company passed a resolution on September 21, 1970 (Ext.12) to sell the suit property in favour of the appellants; (ii) the appellants paid Rs.7000/- to one of the directors of the Company under receipt dated December 30, 1970 (Ext.10) and (iii) sale deed was executed by the company on March 20, 1972 (Ext.9). He invited our attention to the evidence of P.W.8, the accountant of the Company, to prove passing of the resolution, to substantiate payment of Rs.7000/- and its entry in the books of accounts of the Company and the execution of the sale deed dated March 20, 1972 (Ext.9) by the Company. In view of these proved facts and in the absence of any rebuttal evidence, it was contended, the High Court ought to have held that the sale of the suit property under Ext.8 was genuine and valid. Mr. Anip Sachthey, learned counsel appearing for the respondents, has contended that the suit property is in the midst of the colliery and that the directors of the Company and the appellants are no other than husbands and wives and that the transaction was entered into to save the suit property from vesting in the Central Government under Section 3 of the Act of 1973. We have perused the deposition of P.W.8 accountant - and the impugned judgment. There can be no doubt that the High Court in para 13 of its judgment mentioned that the resolution of the company dated September 21, 1970 (Ext.12), receipt evidencing payment of Rs.7000/- on December 30, 1970 (Ext.10) under which one of the directors, husband of appellant No.1, received the said amount and the sale deed executed on March 20, 1972 (Ext.9), had been proved by the appellants. But, then the High Court also noted with approval the following circumstances, pointed out by the first Appellate Court: firstly, the resolution dated September 21, 1970 (Ext.12) was an antedated document. Mr.Srivastava submitted that the government authorities were in possession of all the records of the Company and they should have produced the original record to substantiate the allegation that the resolution was antedated and in the absence of such record the High Court was not justified in confirming the finding of the First Appellate Court. The fact remains that the appellants themselves took no steps to summon the record from the custody of the concerned authority. That apart there is no mention of the resolution dated September 21, 1970 (Ext.12) either in the receipt (Ext.10) signed by one of the directors or in the agreement for sale of January 3, 1971 (Ext.8) or in the sale deed dated March 20, 1972, (Ext.9). On the basis of the intrinsic evidence, pointed out above, the conclusion that the resolution was an antedated document, appears to be irresistible. Secondly, it is pointed out by the High Court that though the resolution mentions the sale consideration as Rs.5000/-, there is no explanation as to why it was enhanced to Rs.7000/- for which receipt was signed by one of the directors of the Company. Thirdly, a more telling aspect is that the appellants did not exercise their rights as purchasers over the suit property till the date of the filing of the suit; the water and electricity connections were obtained during the pendency of the suit by them; further till the date of vesting of the suit property under the Act of 1973, it was maintained by the Company for the use of the directors. It is rightly commented by the High Court that the agreement for sale (Ext.8) of the suit property is not a registered document; it recites the suit property will be sold for Rs.7000/- even though the consideration of Rs.7000/- was paid on December 30, 1970 (Ext.10) itself and neither the agreement nor the sale deed is in terms of the resolution. Two other aspects which have weighed

with the High Court are : the transaction of sale was between the husbands and the wives and that they had no independent source of their income, which cannot be ignored altogether as irrelevant. Mr Srivastava submitted that undue emphasis was given to the fact that the directors of the Company were brothers and the appellants are their wives. He argued that the Company is a separate legal entity which is independent of its directors and shareholders and repeatedly referred to the oft-quoted decision in *Salomon Vs. Salomon*. The principle laid down in *Salomons* case more than a century ago in 1897 by the House of Lords that the company is at law a different person altogether from the subscribers who have limited liability, is the foundation of joint stock company and a basic incidence of incorporation both under English law and Indian law. Lifting the veil of incorporation under statutes and decisions of the courts is equally settled position of law. This is more readily done under American law. To look at the realities of the situation and to know the real state of affairs behind the facade of the principle of the corporate personality, the courts have pierced the veil of incorporation. Where a transaction of sale of its immovable property by a Company in favour of the wives of the directors is alleged to be sham and collusive, as in the instant case, the Court will be justified in piercing the veil of incorporation to ascertain the true nature of the transaction as to who were the real parties to the sale and whether it was genuine and bona fide or whether it was between the husbands and the wives behind the facade of separate entity of the Company. That is what was done by the High Court in this case. There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. But a plain reading of question No.1 discloses that it is in two parts; the first part says, whether the transaction, in question, is bona fide and genuine one which has to be proved by the appellants. It is only when this has been done that the respondent has to dislodge it by proving that it is a sham and fictitious transaction. When circumstances of the case and the intrinsic evidence on record clearly point out that the transaction is not bona fide and genuine, it is unnecessary for the court to find out whether the respondent has led any evidence to show that the transaction is sham, bogus or fictitious. For the afore-mentioned reasons, we are unable to say that the High Court erred in taking the view that the sale, in favour of the appellants, is neither bona fide nor genuine and confers no right on them. In view of the finding on point No.1, the suit property remained the property of the Company and, therefore, it vested in the Central Government under Section 3(1) of the Act of 1973. This is what the High Court held on point No.2. which is supported by the judgment of this Court in *Bharat Coking Coal Ltd. Vs. Madanlal Agrawal* [1997 (1) SCC 177]. In the result, we find no merit in the appeal. It is accordingly dismissed with costs.