

(2011) 10 RAJ CK 0009
In the Rajasthan High Court
Case No : Civil Revision Petition No. 3 of 2010

Anant Sri Sukhramji Trust Ramdham, Birai	APPELLANT
Vs	
Shri Balaaji Grah Nirman Sahkari Samiti Ltd. and Others	RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Rajasthan Co-operative Societies Act, 1965 — Section 137, 75 , 75A
Rajasthan Co-operative Societies Act, 2001 — Section 117, 135, 52, 58, 58(1)

Citation : (2011) 10 RAJ CK 0009

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dr. Justice Vineet Kothari

1. Defendant Petitioner Anant Sri Sukhram Ji Trust Ramdham, Birai, in a Civil Suit filed by a Co-operative Society, Shri Balaji Grah Nirman Sahkari Samiti, Ltd., for cancellation of sale-deed executed by Defendant No. 2 Harivallabh son of Sita Ram in his individual capacity in favour of Defendant is before this Court by way of present revision petition, aggrieved by the order dated 30.10.2009 passed by the learned trial Court of Additional District Judge (Fast Track), Parabatsar, District, Nagaur, rejecting the Defendant's application filed under Order 7 Rule 11 CPC seeking dismissal of the suit itself an anvil of Section 58 (1)(e) of the Rajasthan Co-operative Societies Act, 2001, read with Section 117 of the Act which bars the jurisdiction of the Civil Court or Revenue Court, under given circumstances.

2. Learned Counsel for the Defendant Petitioner, Mr. Sajjan Singh relying upon the decision of co-ordinate Bench of this Court in the case of Hanuman Meena Vs. Chandra Singh, submitted that since the dispute between the Plaintiff Cooperative Society and its Member Defendant No. 2 Harivallabh who had sold

the plot of land in question to the Defendant by a registered sale-deed on 27.6.2003 was a dispute referable to the Registrar in accordance with the provisions of Section 58 of the new Rajasthan Co-operative Societies Act, 2001 parallel to Section 75 of the Old Act of 1965, therefore, the present suit for cancellation of sale-deed was not maintainable and the trial Court has erred in rejecting the application filed under Order 7 Rule 11 of the Code of Civil Procedure.

3. He further submitted that in view of the statutory arbitration provisions contained in Section 58 in Chapter 10 of the Act of 2001 in the form of Section 58 which under its Clause (e) includes inter-alia transaction u/s 52 of the Act, which also provides for certain restrictions on the transaction of the Co-operative Society with the persons other than its members, save as provided in Sections 50 and 51, it was incumbent upon the trial Court to refer such dispute to Arbitrator in view of mandatory provisions of Section 8 of the Arbitration and Conciliation Act, 1996. He relied upon the decision of the Hon''ble Supreme Court in the case of Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, to support this contention.

4. Per contra, the learned Counsel, Mr. H.R. Soni appearing for the Plaintiff-Respondent Shri Balaji Grah Nirman Sahkari Samiti Ltd. relied upon a decision of this Court in the case of Harsh Vardhan Kejriwal v. Madhav Nagar Grah Nirman Sahkari Samiti Ltd. and Ors. 2007 (4) RLW 3473. He urged that the words "dispute touching the business of a Co-operative Society" employed in Section 58 of new Act of 2001 or Section 75 of the Old Act of 1965, does not cover the case where the dispute relates to civil rights like title, possession dispute or dispute as to agreement to sell etc., and the jurisdiction of Civil Court or Revenue Court is not barred by Section 117 parallel to Section 137 of the Old Act. He submitted that in the present case, the sale deed in question dated 27.6.2003, the cancellation of which was prayed for in the present suit filed was not executed by the Plaintiff Co-operative Society itself, but by the Defendant No. 2 Harivallabh in his own individual capacity who had no right to sell the said plot of land belonging to the Plaintiff Co-operative Society, therefore, such transaction can neither be said to be a transaction by the Co-operative Society covered u/s 52 of the Act nor a dispute raised with regard to right to sell can be a dispute referable before the Registrar of Co-operative Societies u/s 75 or Section 58 of the New Act or before any other Arbitrator, as is sought to be contended by the Learned Counsel for the Defendant-Petitioner.

5. Having heard the Learned Counsels for the parties and upon perusal of the impugned order, reasons given therein, relevant provisions of the statutes and the Judgments cited at the bar, this Court is of the considered opinion, that the present revision petition filed by the Defendant-Petitioner does not have any merit and the same deserves to be rejected. Reasons are as follows:

6. This Court in the case of Harsh Vardhan Kejriwal v. Madhav Nagar Grah Nirman Sahkari Samiti Ltd. and Ors. while dealing with similar controversy held

in para 12 of the said judgment as under:

(12). of course, one of the objectives by providing for bar of jurisdiction of civil or revenue Courts in Section 137 was to avoid delays in litigation relating to co-operative societies and confer such powers on the Registrar/Arbitration Tribunal under the Act with powers of civil courts conferred upon them by Section 135 of the Act, yet it is very clear that for determination of disputes relating to civil rights like title, possession dispute as to agreement of sale etc., the jurisdiction of civil or revenue courts was neither envisaged to be curtailed nor in fact has so been curtailed or barred. The wholesome reading of Section 75 would indicate that it is the dispute between the members inter-se or members and the society or between two or more societies relating to their working as co-operative society alone in accordance with law including its bye laws and not in an illegal or unlawful manner like encroachments or other illegal possession etc., which is sought to be excluded from the jurisdiction of the civil or revenue courts and not where intricate question of fact and law relating to title, possession and contractual obligations are called in question for which civil courts alone have the jurisdiction under the provisions of Section 9 of the CPC along with other relevant provisions providing for trying such civil suits by the civil courts in Code of Civil Procedure. If the land in question is agricultural in nature it is the revenue courts which will have the jurisdiction. The words "dispute touching the business of a co-operative society" cannot expand the jurisdiction of Registrar or Tribunal under this Act beyond parameters of the Act itself and a Registrar of the Co-operative Society does not have full fledged powers of a Civil Court to take and weigh relevant evidences on different sides and make a judicial pronouncement upon them. The Act, in the opinion of this Court, only meant that if dispute arises about the working of the co-operative societies relating to their constitution, management and business as a co-operative society arises even between two or more co-operative society arises even between two or more co-operative societies inter se or between society on one hand and members on the other side or inter-se members, the Registrar of the co-operative societies may deal with such disputes and approaching of civil Court or revenue Courts in such matters is avoided to make this Act a self contained code for dealing with the co-operative society registered under the Act. The judgment cited above of M.P. High Court, Gujrat and Delhi High Court fully support the case of Appellants and are applicable in the present case.

7. A coordinate bench of this Court in Hanuman Meena v. Chandra Singh (Supra), relied upon by the Learned Counsel for the Defendant-Petitioner Mr. Sajjan Singh was seized of a case where the plot of land in question was sold by Shri Laxmi Narayanpuri Bhawan Nirman Sahkari Samiti Ltd., Jaipur, a co-operative society registered under the provisions of Rajasthan Co-operative Societies Act, 1965, and upon a dispute arising in the matter, the Co-ordinate Bench of this Court held that according to Section 75-A of the Act of 1965, in case, there is a dispute among past members and the persons claiming through members, then such dispute has to be referred to the Registrar. The relevant extract of para 9 of the

said judgment is quoted below, for ready reference:

9. The business of the Co-operative society is certainly the selling of the plot to the members. Hence, a dispute with regard to the size or sale of the plot amongst the members would necessarily have to be referred to the Registrar. Section 137 of the Act of 1965 clearly prohibits a civil Court from having any jurisdiction in respect of any dispute covered u/s 75 to be referred to the Registrar. In the present case, the dispute clearly related to the size of the plot allotted by the society to the Plaintiff and the Defendant No. 1. Since the Appellant-Defendant No. 2 had brought the plot from Defendant No. 1, and since there was a dispute that arose between the Plaintiff and the Appellant, obviously the dispute related between a member and a person who claimed through a past member of the society. Thus, obviously the dispute comes within the purview of Section 75 of the Act of 1965.

8. The facts of the aforesaid judgment in the case of Hanuman Meena (Supra) are ex-facie distinguishable. Firstly, the sale in the present case is not made by the Co-operative Society, itself but by Defendant No. 2 Shri Hari Vallabh in his individual capacity. Merely because he was a member of the Plaintiff co-operative society at the releavant point of time, the dispute now arising cannot be said to be a dispute between the co-operative society and its members, past or present. Secondly, the dispute before this Court in Hanuman Meena v. Chandra Singh (Supra) was as to the size of the plot allotted to the Plaintiff and Defendant No. 1. No such inter-se dispute between the members of a co-operative society is involved in the present case. On the other hand, the very right and locus-standi of the Defendant No. 2, to sell the land of society is under challenge in the present suit filed by the Plaintiff co-operative society for cancellation of such sale deed. It is not a dispute simpliciter between the co-operative society and its members, touching the business of the co-operative society.

9. This Court in Harsh Vardhan Kejriwal v. Madhav Nagar Grah Nirman Sahkari Samiti Ltd. and Ors. (Supra), has already held that the dispute relating to title, possession dispute and agreement to sale etc., would not fall within the ambit and scope of Section 75 of the Old Act or Section 58 of the new Act of 2001 and therefore, the jurisdiction of civil Court was not barred in such cases.

10. The contention raised by the Learned Counsel for the Defendant Petitioner about Section 52 of the Act of 2001 also does not hold any water for the same reasons because it is not a transaction of a co-operative society with a third party which is under challenge in the present case but in a transaction of sale by an individual with the Defendant Trust which has been challenged by Plaintiff co-operative society whether Harivallabh has a right to sell the land belonging to the Trust itself, is under challenge in the suit filed by it.

11. Therefore, neither Section 52 nor Section 58(e) of the Act read with Section 117 of the Act, can bar the jurisdiction of the Civil Court in the present case.

Therefore, the learned trial Court was perfectly right in rejecting the application of Defendant in the present case filed under Order 7 Rule 11 Code of Civil Procedure. There appears to be no error or illegality in the order impugned dated 30.10.2009 passed by the trial Court. The revision petition of Defendant is devoid of merits and the same is accordingly dismissed. No costs.