
(1990) 07 BOM CK 0030
In the Bombay High Court
Case No : A.O. No. 612 of 1985

Arun Wamanrao Shinde

APPELLANT

Vs

Prakash Bhagwan Dalvi and others

RESPONDENT

Date of Decision : 05-07-1990

Acts Referred:

Citation : AIR 1991 Bom 128 : (1990) 3 BomCR 387

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; Navin B. Shah, for the Respondent

Judgement

S.M. Daud, J.—The short question arising in this appeal is the correctness or other wise of the trial Court's finding on a preliminary issue about its not having jurisdiction to entertain the suit pursuant to S. 91(1)(b) of the Maharashtra Co-operative Societies Act, 1960.

2. Appellant plaintiff's case was that defendant 2 was a Co-operative Housing Society with Defendants 3 to 5 being its office bearers. Prior to the formation of Defendant 2, certain persons had joined hands to promote the said society and enrol members. One of the persons enrolled was defendant 1. The 1st defendant made certain payments towards the cost of a flat etc. His financial position becoming difficult he assigned his right, title and interest on or about 3 Dec. 1982 to the plaintiff. Physical custody of the receipts showing the payments made by defendant 1 coupled with a letter of resignation were made over to the plaintiff. On the basis of these documents the plaintiff started making payments to the society and attending its meetings. Subsequently, the 1st defendant tried to take advantage of the fact that his name was still on the membership roll. Therefore, plaintiff was compelled to sue, the relief being a declaration that he was entitled for allotment of a flat by defendant 2 in place of defendant 1, Exception was taken to the jurisdiction of the Civil Court to entertain this suit, it being defendant 1's contention that the suit raised a dispute which fell clearly within the four corners of S. 91(1) of the aforementioned Act. This contention

having been sustained by the trial Court, plaintiff has come up in appeal.

3. Section 91(1) of the Act to the extent relevant reads as under:--

"91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching..... business of a society shall be referred by any of the parties to the dispute..... to the Co-operative Court, if both the parties thereto are one or other of the following :--

(b) a member, past member or a person claiming through a member, past member or a deceased member of society..... or a person who claims to be a member of the society."

Mr. Abhyankar for the appellant submits that the trial Judge was wrong in holding that the plaintiff raised a dispute which fell within the provision extracted above. In support of his submission, the learned Counsel relies upon *Maya Bhagwandas Advani v. Bhagwandas Tarachand Advani* 1978 Mah LJ 449. In that case the dispute was between couple, the husband alleging that the five shares of a cooperative housing society which stood in the name of his wife, really were owned by him. The matter was taken to an Officer on Special Duty, who prior to the amendments in the Act, resolved these disputes, who held that he had jurisdiction to try the dispute. This view was overruled by the High Court in writ and it was held at page 452-

"..... in the case of the benami transaction, the real title, whether it is legal or beneficial, vests in the true owner, there is nothing which can be claimed by the true owner through the benamidar who is the holder as between the benamidar and the true owner..... Opponent No. 1 cannot therefore say that he was claiming any kind of ownership in respect of the shares of the society through his wife in whose name the shares stood. All that the true owner is entitled to in a case like this is a declaration that he is the true owner because his rights as true owner are being disputed by the person in whose name the property stands."

Now the plaintiff in the instant case is not to the effect that defendant 1 was a benamidar of the plaintiff. In fact plaintiff is claiming as an assignee of the right, title and interest that defendant 1 had. That will touch the business, of the society in the sense that the society will be bound by the decision as to the person entitled to the allotment to a flat and all other rights and liabilities annexed to the membership. This therefore, is a case which clearly falls within Section 91(1)(b) of the Act. The learned trial Judge was right and sustaining his decision, I dismiss the appeal. Costs in this Court to be the costs in the cause.

4. Appellant given six weeks time as from today to receive back the plaint from the City Court and represent it to the Co-operative Court.

5. Order accordingly.