
(1990) 03 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3224 of 1989

Avtar Singh and Another

APPELLANT

Vs

Sukhvinder Singh and Others

RESPONDENT

Date of Decision : 09-03-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1990) 98 PLR 48

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Judgement

A.L. Bahri, J.—The trial Court, on June 11, 1987, dismissed the suit brought by Sukhvinder Singh and others, sons of Gurbax Singh, on the two preliminary issues relating to the jurisdiction of the Civil Court to try the suit and for want of notice u/s 79 of the Punjab Co-operative Societies Act, 1961 (hereinafter called "the Act"). On appeal filed by Sukhvinder Singh and others, plaintiffs, the Additional District Judge, Patiala, set aside the judgment and decree of the trial Court and remanded the case back to the trial Court for decision of the issues in the light of the evidence to be produced by the parties. It was also noticed that some application for amendment of the plaint was moved which was also for disposal by the trial Court. Two of the defendants have filed this revision petition.

2. Sukhvinder Singh and others filed this suit for declaration that auction sale and sale certificate dated December 27, 1989, issued by the Sales Officer in respect of land measuring 30 Bighas 3 Biswas in favour of Avtar Singh and Sarwan Singh defendants was illegal, null and void" and not binding on the plaintiffs. The plaintiffs are sons of Gurbax Singh who had taken loan of Rs 18,000/- from the Patiala Primary Co-operative Mortgage Bank Ltd., Patiala, (for short called "the Bank") in the year 1972, as per allegations of the Bank. In fact he had taken only Rs. 5,000/- which had been returned. At that time Gurbax Singh was of unsound mind and not capable of entering into any agreement. The

plaintiffs claim to be owners of the suit land in view of a decree dated November 4, 1977, passed by Senior Sub Judge, Patiala. It was the said land which was sold by the Assistant Registrar, Co-operative Societies, Patiala cum-Sales Officer. At the time the plaintiffs were stated to be minors and the sale was effected without their consent or their guardian's consent. At the time of the sale Gurbax Singh had no concern with the suit land. It was further alleged by the plaintiffs that in fact no auction took place. The appellants were not given any opportunity of hearing before auction. The Bank contested the suit and denied the allegations of the plaintiffs, for want of knowledge. Decree of transfer of land in favour of the plaintiffs. It was alleged that Gurbax Singh got redeemed the land after raising a loan of Rs. 18,100/- from the bank in the year 1971 and in lieu thereof he mortgaged 30 Big eras 3 Biswas of land with the Bank. Thereafter Gurbax Singh raised another loan of Rs. 5,000/- required for the tube-well. This was taken in August 1972 and Gurbax Singh had agreed to mortgage 12 Bighas 10 Biswas of land as security. Since Gurbax Singh failed to repay the loan, the Assistant Registrar sold the land. In the alternative it was stated that even if the land was transferred in favour of the plaintiffs, they were bound to pay the dues to the bank as, it was specially mentioned that the transfer of suit land was subject to in-cumbrances if already on the land. It was further asserted that earlier a similar suit was filed which was dismissed on November, 3, 1979 and the present suit was barred by res judicata. The Assistant Registrar-cum Sales Officer also contested the suit inter alia pleading that Gurbax Singh had failed to repay the loan and the matter was referred to the Arbitrator. Award was given against Gurbax Singh and it was in execution of the Award that the land was put to auction which was purchased by Avtar Singh and Swaran Singh defendants.

3. Two preliminary issues which were deeded by the trial Court were issues Nos. 6 and 11 which are reproduced below :--

6. Whether this court has no jurisdiction to try this suit and the same is barred under the provisions of Co-operative Societies Act ? OPD

(11) Whether the suit is bad for want of notice u/s 79 of Punjab Co-operative Societies Act to the Society ? OPD

4. The question for consideration in this revision is that as per pleadings of the parties the preliminary issues could be disposed of or some evidence was required to be recorded and these two issues could also be disposed of on merits with the other issues. In the grounds of revision reliance has been placed on the decision of the Madras High Court in *Boggrapu Venkatasubbiah and Anr. v. Chenchupalli Peeriah* AIR 1952 Mad. 226. It was a case under Madras Co-operative Societies Act. A sale had taken place in execution of the Award under the provisions of the Cooperative Societies Act as applicable there. It was held that authorities under the said Act had sufficient powers to set aside Award on different grounds provided and the Civil Court had no jurisdiction to entertain suit for declaration that certain sales made in execution of the Award by the Co-operative Societies were invalid. The aforesaid decision strictly covers the case in

hand. The lower appellate Court referred to certain decisions cited which were distinguished. The matter was for consideration before the Full Bench of this Court in *Ran Singh v. The Gandhar Agricultural Cooperative Service Society*, Gandhar 1982 P.L.J. 162 . It was held therein that the Award given by the Registrar or Arbitrator under the Punjab Co-operative Societies Act could be executed as a decree of the Civil Court. However, jurisdiction of the Civil Court was not effected if the Award was made without jurisdiction and was a nullity. It was further held that a decision rendered in contravention of the rules framed under the Act in the arbitration award could not be executed as a decree of the Civil Court and objection to the execution could be raised. However, while determining the scope of Sections 55 and 82 of the Punjab Societies Act it was held that if the dispute was between the Co operative Societies and its members in respect of dispute touching the business of the Society the same could be referred to the arbitration and the Civil Court had no competence to adjudicate upon the matter. The Supreme Court in *Sabharwal Brothers and Another Vs. Smt. Guna Amrit Thandani of Bombay*, , also laid down as under :--

"Where the objects of a society were to carry on the trade of buying, selling, hiring and letting land in accordance with the cooperative principles, the letting by a member of such society of the flat purchased from the society could not be said "to touch the business of the society". The fact that such letting was forbidden by a regulation of the society was immaterial."

5. On the basis of the aforesaid decision it could not be said that in the present case the object of the Society was not to lend the loan, the name of the Society itself shows that it is a Bank and purpose is to lend loan to its members That being the position the matter could be referred to the Arbitration under the Punjab Co-operative Societies Act and the Award would be valid and within jurisdiction If land of the judgment debtor was sold in execution of the said Award, the same could not be questioned in the Civil Court Likewise notice u/s 79 of the Act was also necessary before filing the suit, if at all the same was maintainable The lower appellate Court relied upon the decision of this Court is *Nawanshahar Central Co-op. Bank Ltd, v. Sohan Lal & sons etc* 1982 L.L.R. 515. In that case the business of the Cooperative Society was supply of seed, manure, agricultural implements etc That said Society after raising loan had distributed the same and it was held that raising loan was not stipulated as one of the business of the Society, and suit not touching the business of the Society was competent. The ratio of this decision cannot be applied to the facts of the case in hand as the Society in dispute is a Land Mortgage Bank and lending loan obviously is a business of the Society.

6. For the reasons recorded above, this revision is accepted The order of the lower appellate Court is set aside and the judgment and decree of the trial Court are restored. There will be no order as to costs.